



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction and Procedural Matters

This hearing was convened as a result of the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for a monetary order for unpaid rent, for authority to retain the tenants' security deposit, and for recovery of the filing fee paid for this application.

The landlord AB attended the telephone conference call hearing; the tenants did not attend.

Prior to this hearing, the landlords filed an ex parte application for an order for substituted service pursuant to section 71(1) of the Act, requesting authority that their application for dispute resolution be served to the tenants in a different manner required under section 89 of the Act.

In a decision of January 29, 2019, by an adjudicator for the Residential Tenancy Branch (the "RTB"), the landlords were granted authority allowing the landlords to serve their application for dispute resolution on the tenants by text message to tenant BH on the phone number listed in that decision. The adjudicator also ordered the landlords to provide proof of service by text message which may include a screen shot of the text being sent, a reply from the tenants, or other documentation to confirm that the landlords have served the tenants in accordance with the order in the decision of January 29, 2019.

Upon review of the landlords' evidence, I find that the landlords submitted sufficient proof of screen shots that tenant BH was served in a manner complying with the order for substituted service dated January 29, 2019. As a result, the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (“Rules”); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue

After reviewing the evidence of the landlords, I find only tenant, BH, signed the written tenancy agreement. As a result, I find the named respondent SG is not a tenant. I therefore exclude listed occupant, SG, from any further consideration in this matter.

Issue(s) to be Decided

Are the landlords entitled to a monetary order comprised of unpaid rent owed under the tenancy agreement and recovery of the filing fee?

Are the landlords entitled to retain the tenant’s security deposit in partial satisfaction of any monetary award?

Background and Evidence

The written tenancy agreement supplied by the landlords shows that this tenancy began on September 1, 2016, monthly rent payable by the tenant was \$900.00, due on the first day of the month, and a security deposit of \$450.00 was paid by the tenant at the beginning of the tenancy.

The landlords gave evidence that the monthly rent was increased by mutual agreement to \$1,100.00 when an additional occupant began living in the rental unit. The landlords provided rent receipts showing the payments of \$1,100.00 from the tenants, beginning in February 2017.

The landlord gave evidence that on January 13, 2019, the tenant was served with the Notice, by attaching it to the tenant’s refrigerator door, listing unpaid rent of \$2,200.00 as of January 1, 2019. The effective vacancy date listed on the Notice was January 23, 2019. The landlords also submitted photographic evidence of the tenant reading the Notice on that date.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant failed to pay any further rent and vacated the rental unit, owing the amount of \$2,200.00.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

I find the undisputed evidence shows that the parties mutually agreed to increase the monthly rent to \$1,100.00, as of February 2017. When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

As such, I find the landlords submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed in the amount of \$2,200.00, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

As such, I grant the landlord a monetary award in the amount of \$2,200.00, pursuant to section 67 of the Act.

I also grant the landlord recovery of their filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlords are entitled to a total monetary award of \$2,300.00, comprised of outstanding rent of \$2,200.00 through January 2019, and the \$100.00 filing fee paid by the landlords for this application.

I direct the landlords to retain the tenant's security deposit of \$450.00 in partial satisfaction of their monetary award of \$2,300.00, and grant the landlords a monetary order for the balance due, in the amount of \$1,850.00.

Should the tenant fail to pay the landlords this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords' application for a monetary order for unpaid rent has been granted.

The landlords have been awarded recovery of the filing fee.

The landlords have been granted a monetary order in the amount of \$1,850.00, comprised of unpaid rent of \$2,200.00, plus \$100.00 for the filing fee, less the security deposit of \$450.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 14, 2019

Residential Tenancy Branch