



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on January 9, 2020 as amended on March 13, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord M.C. attended the hearing on behalf of the Landlords and provided affirmed testimony. The Tenant did not attend the hearing.

M.C. testified the Notice of a Dispute Resolution Proceeding package was served on the Tenant by registered mail on January 15, 2020. A signed Proof of Service document confirming service in this manner as submitted into evidence. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. Therefore, I find these documents are deemed to have been received by the Tenant on January 20, 2020.

The Landlords also submit an amendment which was received at the Residential Tenancy Branch on March 13, 2020, four days before the hearing. The amendment purported to add a claim related to damage to the rental unit. However, the Rule of Procedure 4.3 requires that any amendment be submitted in time for the parties to serve documents in a manner and time specified in the *Act* and the Rules of Procedure. In this case, having been received at the Residential Tenancy Branch on March 13, 2020, I find the amendment was not made in time for the Landlords to comply with the service requirements of the *Act* and the Rules of Procedure. Therefore, in accordance

with Rule of Procedure 2.3, I find that the claims set out in the amendment are dismissed with leave to reapply.

M.C. was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

As noted below, M.C. confirmed during the hearing that the Tenant vacated the rental unit on January 15, 2020 and that an order of possession is no longer required. Therefore, the only issues for consideration relates to the amount of rent outstanding and whether the Landlords are entitled to recover the filing fee.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to recover the filing fee?

Background and Evidence

M.C. testified the tenancy began on November 1, 2018 and ended on January 15, 2020. During the tenancy, rent in the amount of \$1,050.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$475.00, which the Landlords hold.

M.C. testified the Tenant did not pay rent in full on January 1, 2020. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 3, 2019 (the "10 Day Notice"). At that time, rent in the amount of \$1,050.00 was outstanding. On behalf of the Landlords, M.C. testified the 10 Day Notice was served on the Tenant in person on January 3, 2020. The Landlords submitted a signed Proof of Service document in support of service in this manner.

In addition, M.C. testified rent was not paid when due on February 1 and March 1, 2020, and that rent in the amount of \$3,150.00 is currently outstanding. Although M.C. stated she anticipates being able to re-rent the unit as of April 1, 2020, the Landlords have been unable to do so due to the condition of the rental unit.

The Tenant did not attend the hearing to dispute the Landlords' evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Reproduced as written.]

I find the Tenant received the 10 Day Notice on January 3, 2020. There is no evidence before me that the Tenant disputed the 10 Day Notice by filing an application for dispute resolution within five days after receipt – January 8, 2020 – in accordance with section 46(4) of the *Act*. In addition, I find that the Tenant did not pay rent as alleged on January 1, February 1, and March 1, 2020, and that the Landlords have been unable to re-rent the unit due to the condition in which it was found after the Tenant vacated.

Considering the above, I find the Landlords have established an entitlement to unpaid rent in the amount of \$3,150.00 (\$1,050.00 x 3 months). Having been successful, the Landlords are also entitled to recover the \$100.00 filing fee paid to make the Application. I also find it is appropriate in the circumstance to order that the Landlords are authorized to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$2,775.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent (January 1 – March 31, 2020):	\$3,150.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$475.00)
TOTAL:	\$2,775.00

Conclusion

The Landlords are granted a monetary order in the amount of \$2,775.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 17, 2020

Residential Tenancy Branch