



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1123872 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNR
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 9, 2021.

The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- cancel the 10 Day Notice to End Tenancy for Unpaid rent or utilities (the Notice);

The Landlord applied for the following relief:

- an order of possession based the 10 Day Notice to End Tenancy; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided testimony. However, the Tenants did not attend. The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that she no longer requires an order of possession, since the Tenants moved out on February 2, 2021. The Landlord is only seeking a monetary order for unpaid rent. I have amended the Landlord’s application to reflect this. The Landlord testified that she served the Tenants with her Notice of Hearing, and evidence by sending the package via registered mail (to the rental unit) on January 22, 2021. Proof of mailing was provided. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed to have received this package 5 days after it was sent, on January 27, 2021.

The Landlord also sent a second evidence package to each Tenant at the forwarding address they provided at the move-out inspection. The Landlord provided proof of mailing to show this package was sent on March 15, 2021. Pursuant to section 88 and 90 of the Act, I find the Tenants are deemed served with this package 5 days after it was mailed, March 20, 2021.

Since the Tenants did not appear at this hearing, I dismiss their application in its entirety, without leave to reapply.

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.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent in the amount of \$3,591.00 is due on the first of each month. The Landlord collected a security deposit in the amount of \$1,750.00. The Landlord stated that the Tenants failed to pay rent on January 1, 2021, and as a result a 10 Day Notice was issued to the Tenants on January 8, 2021. The Landlord stated that the Tenants decided to move out, as they were having money issues.

The Landlord is seeking to recover January rent at this proceeding, further outlined below.

The Landlord stated that the Tenants moved out on February 2, 2021, which is the same day the move-out inspection was completed. The Landlord stated that on February 4, 2021, the Tenants paid \$591.00 as a payment towards rent for January. The Landlord provided a copy of an email chain with the Tenants whereby they discussed damages to the rental unit and outstanding rent. The Landlord explained that the Tenants agreed, in writing, as part of the email thread provided into evidence that the Landlords could retain \$1,279.53 from the security deposit to pay for a window and some carpet, and that the remaining \$470.47 would be put towards the unpaid January rent.

The Tenant responded the email by agreeing with the above deductions and calculations. The Landlord stated that they are still owed \$2,529.53 for January rent, which is \$3,591.00, less the \$591.00 they paid on February 4, 2021, and less the \$470.47 that the Tenants agreed to deduct from their security deposit.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenants had any right under the *Act* to withhold rent or that January rent was not due and payable, in full. With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the Landlord's documentary evidence and testimony before me to demonstrate that the Tenants still owe \$2,529.53 in rent for January, after taking into account the agreement surrounding the deductions on the security deposit, as outlined above.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I order the Tenants to repay the \$100.

In summary, I find the Landlord is entitled to a monetary order in the amount of \$2,629.53.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,629.53**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 09, 2021