



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF
 CNC CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant K.V.

The Landlord filed on March 18, 2014, seeking a Monetary Order for: unpaid rent or utilities; to keep all of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on February 6, 2014, seeking an Order to cancel a Notice to end tenancy for cause and to cancel a Notice to end tenancy issued for unpaid rent.

The Landlord and her spouse W.C. appeared at the hearing and provided affirmed testimony. Only one Landlord is listed as applicant to this dispute; therefore, for the remainder of this decision, terms or references importing the singular shall include the plural and vice versa.

The Landlord submitted evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on March 18, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find each Tenant is deemed served notice of this proceeding on March 23, 2014, five days after they were mailed, in accordance with section 90 of the Act; and I proceeded in absence of the Tenants.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order?
2. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a month to month tenancy that commenced on July 1, 2012. The Tenants were

required to pay rent of \$1,160.00 on the first of each month and on or before July 1, 2012 the Tenants paid \$580.00 as the security deposit. The parties attended the move-in inspection on July 1, 2012 and the move out inspection on March 3, 2014.

The Landlord provided evidence that on January 29, 2014 they served the Tenant(s) with a 1 Month Notice to end tenancy for cause. On January 31, 2014, Tenant E.C. provided written notice that she would vacate the unit at the end of February 2014. E.C. paid \$600.00 towards the February 2014 rent and when the balance of \$560.00 for February 1, 2014 rent was not paid the Landlord personally served K.V. with a 10 Day Notice for unpaid rent.

The Landlord provided evidence that on February 19, 2014, K.V. informed her that she had found a place for March 1, 2014, but her movers could not move her until March 2, 2014. The Landlord regained possession of the unit on March 2, 2014 and is now seeking compensation for the unpaid February rent of \$560.00.

Analysis

Given the evidence before me, in the absence of testimony from the Tenants who did not appear despite this hearing being convened to hear matters pertaining to K.V.'s application, and despite the Landlords serving each Tenant with Notice of their application, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence.

The Landlord claims for unpaid rent of \$560.00 that was due February 1, 2014, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

The Tenant(s) remained in possession of the unit until March 2, 2014, without paying the full rent due for February, 2014. Accordingly, I find that the Landlord has met the burden of proof and I hereby approve her claim for unpaid February rent in the amount of **\$560.00**.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

February 2014 unpaid rent	\$560.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$610.00
LESS: Security Deposit \$580.00 + Interest 0.00	<u>-580.00</u>
Offset amount due to the Landlord	<u>\$ 30.00</u>

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing - the hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for 13 minutes and no one on behalf of the Applicant Tenant called into the hearing during that time. Based on the aforementioned, I find that the Tenant has failed to present the merits of her application and the application is dismissed, without leave to reapply.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$30.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

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 27, 2014

Residential Tenancy Branch

