



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated May 11, 2017 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf and provided affirmed testimony. The Tenants did not attend the hearing.

The Landlord testified the Application package was served on each of the Tenants by registered mail. The Landlord submitted images of packages sent to the Tenants' forwarding address, date-stamped May 24, 2017, in support. According to the Landlord, the packages were not collected by the Tenants. In addition, the Landlord testified that a documentary evidence package was sent to the Tenants' forwarding address by registered mail on September 22, 2017. The Landlord submitted Canada Post registered mail receipts in support. Pursuant to sections 88, 89, and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Application package and documentary evidence package are deemed to have been received on May 29 and September 27, 2017, respectively.

The Landlord was provided with 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence by the Landlord. It confirmed the tenancy began on March 15, 2016. The Landlord confirmed the tenancy ended on January 30, 2017, at which time the Tenants vacated the rental unit. During the tenancy, rent was due in the amount of \$1,750.00 per month. Although the tenancy agreement stipulated that payments were to be made in two installments on the 15th and the last day of each month, the Landlord was flexible. Utilities were not included in rent. The Landlord confirmed that the parties agreed the Tenants would pay all utilities, and could deduct 1/3 of the rent to account for the unused portion of the property. Finally, the tenancy agreement confirmed the Tenants paid a security deposit of \$875.00. According to the Landlord, the security deposit was returned to the Tenants at the end of the tenancy.

The Landlord claimed the Tenants did not make partial payments of rent in November 2016 and January 2017. In support, the Landlord submitted a hand-written log showing these payments were not received. He testified that rent in the amount of \$1,750.00 remains unpaid.

In addition, the Landlord claimed that the Tenants' share of utilities has not been paid correctly. After the tenancy ended, the Landlord discovered the correct usage by contacting BC Hydro and Fortis BC. He determined that, based on usage, the Tenants should have deducted \$826.00 but deducted \$1,240.00. The Landlord seeks to recover the difference in the amount of \$414.00. The Landlord also referred me to email correspondence, dated March 6, 2017, in which D.S. wrote: "please let us know how much money we owe you and we will get it back to you very sorry". A copy of the email correspondence was submitted into evidence by the Landlord.

In addition, the Landlord sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

I find there is sufficient evidence before me to conclude the Landlord is entitled to the monetary relief sought. Specifically, I find the Tenants did not pay rent when due and that \$1,750.00 is outstanding. In addition, I find the Tenants made deductions of more than 1/3 of the amount of the utilities, as per the agreement between the parties, and that the Landlord is entitled to be reimbursed the amount of \$414.00, which is the amount of the over-deduction. Accordingly, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,264.00, which is comprised of \$2,164.00 for unpaid rent and utilities, and \$100.00 in recovery of the filing fee.

Conclusion

The Landlord is granted a monetary order in the amount of \$2,264.00, which 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: October 19, 2017

Residential Tenancy Branch