



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, MNSD and FF

Introduction

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on January 13, 2009. The landlord also sought a Monetary Order for the unpaid rent and filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the landlord gave evidence and the tenant concurred that he had moved out of the rental unit on March 1, 2009. Some of his possessions remained outside but he stated that he was on his way to remove them. Therefore, the landlord withdrew the request for an Order of Possession.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a Monetary Order, the amount, and whether the landlord may retain the security deposit in set off.

Background and Evidence

This tenancy began March 1, 2008. Rent was \$1,100 per month and the landlord holds a security deposit of \$550 paid on February 27, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served when the tenant had not paid the rent for December 2008 or January 2009. In the interim, the tenant did not pay the rent for February 2009.

The tenant concurred that he had not paid the rent but gave explanation that he had withheld it as ice had fallen onto and destroyed some of his patio furniture. In addition, he said there were unresolved issues with the landlord over cable service.

As noted during the hearing, a tenant who has a claim in damages may make application for a Dispute Resolution Hearing to seek a Monetary Order against the landlord and the tenant remains at liberty to make such application.

However, there is no provision in the legislation which would permit the tenant to withhold rent or to permit me to hear the tenant's claim for damages in the absence of an application and evidence from him. While the tenant fervently insisted that his claims be factored against those of the landlord, the hearing concluded without such consideration.

Analysis

I find that the landlord is entitled to a Monetary Order for the unpaid rent and the filing fee for this proceeding, and authorization to retain the security deposit in set off as follows:

December rent	\$1,100.00
January rent	1,100.00
February rent	1,100.00
Filing fee	50.00
Sub total	\$3,350.00
Less retained security deposit	- 550.00
Less interest (Feb. 27, 2008 to date)	- 6.97
TOTAL	\$2,793.01

Conclusion

Thus, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$1,374.44.

March 2, 2009

Dispute Resolution Officer