



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent and utilities, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenant on March 20, 2009. The tenant confirmed he had received them. At the outset of the hearing the landlord confirmed that the tenants have moved out and as a result they abandoned their application for an Order of Possession.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Is the landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to a Monetary Order to recover the filing fee?

Background and Evidence

The tenancy started in September 01, 2007 and ended on April 05, 2009. A security deposit of \$750.00 was paid on August 25, 2007. Rent was \$1,600.00. The tenant's

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were requested to pay their own utility bills with the tenants living in the downstairs rental unit. These were proportioned as 60% for the upstairs unit and 40% for the downstairs unit. The landlord testifies that the tenant's rent was continually late over the time they lived in the rental unit and they were given a 10 day Notice to End Tenancy for unpaid rent and utilities. At this time the tenants owed back rent for February of \$390.00 and back rent for March of \$20.00.

The landlords testify that the tenant had put the Gas bill in their own name but when a large bill came in he requested the landlord put it into his name to prevent the whole of the house being cut off. The landlord testifies that the tenants owe \$808.87 for the gas bill which is their share of the total bill.

The landlords have requested to keep the tenants security deposit because of the damage the tenants did to the house and garden areas. However, the landlord's failed to complete a move out Condition Inspection Report to verify the condition of the house and garden in accordance with the regulations.

The landlords testify that they had asked the tenants not to smoke in the house. The landlords found that the tenants had been smoking when the original tenant downstairs moved out due to the smoke and garbage left outside the back door.

The landlords testify that they agreed to the tenants having a small dog in the rental unit and did not charge a pet damage deposit. After the tenancy started the tenants brought in two cats and another dog along with some pets in cages. The landlords testify that they did ask for a pet damage deposit at this time but did not receive one.

The tenants agree that they do owe some money towards the utility bills. The tenant said that the other tenant's downstairs have the Hydro bill in their name and that the

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tenant had the gas bill in his name. The tenant testifies that he is owed money from the downstairs tenants for their portion of the gas bill and admits he owes them money from his portion of the Hydro bill. As this is a dispute between tenants it is not covered under the Residential Tenancy Act. Therefore I will only be looking at the portion of gas bill owed to the landlord.

The tenants testify that the landlord told them that their son would be moving into the rental unit on April 01, 2009. The Landlord's testify that their son and his friends could not move into the unit because of the cleaning and repairs that needed to be completed. However they state that their son is living in the rental unit while carrying out repairs and cleaning and they are not charging him any rent at this time.

The landlord asked the tenant living in the downstairs portion of the property to give evidence of the state of the rental unit after the tenants had moved out. The witness stated that she had not seen the inside of the property but that the garden was 'OK but a bit messy'

Analysis

I find that the tenant owes rent in the amount of \$676.65. Due to insufficient evidence presented of the damages and cleaning that the landlords testify they need to complete to re-rent the unit to their son the outstanding rent has been awarded which consists of back rent of \$410.00 and pro-rata rent for April of \$266.65 for the five days the tenants overstayed in the rental unit. I also find the landlord is entitled to claim \$808.87 for utilities owed to him by the tenant. I also find the landlord is entitled to recover his filing fee for this application. I order pursuant to section 38(4) of the *Act* that the landlord keep the security deposit in partial payment of the rent and utility arrears. The landlord will be given a Monetary Order for the balance owing as follows:



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Outstanding rent	\$676.65
Filing fee	\$50.00
Less security deposit and accrued interest	-\$765.28
Total	\$770.24

Conclusion

A monetary order in the amount of \$770.24 has been issued to the landlord and a copy of it must be served on the tenant. This order may be filed in the Provincial Court (small claims) of British Columbia and 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 20, 2009.

Dispute Resolution Officer