



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, (MNSD), FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, for a loss of rental income and to recover the filing fee for this proceeding. At the beginning of the hearing the Landlord sought to amend her application to include a claim to keep the Tenant's security deposit in partial payment of unpaid rent. I find that it would serve no purpose to make the Landlord reapply for this relief and would likely only result in the Tenant being responsible for reimbursing the Landlord for an additional filing fee. Consequently, I allowed the Landlord to amend her application to include a claim to keep the Tenant's security deposit.

The Landlord served the Tenant with the Application and Notice of hearing by registered mail on June 4, 2009. According to the Canada Post online tracking system, the Tenant received the hearing package on June 11, 2009. Consequently, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in her absence.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 12, 2008 and ended on or about November 26, 2008. Rent was \$600.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$300.00 on June 21, 2008.

The Landlord said that the Tenant was responsible for depositing rent payments into her bank account. The Landlord said the Tenant did not deposit her August 2009 rent payment until August 6, 2009. The Tenant then set up an automatic transfer whereby her rent payment would be deposited to the Landlord's account on the first day of each month, however her payments for October and November were reversed for non-sufficient funds. The Landlord said that October and November 2009 rent remains

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unpaid. The Parties' tenancy agreement contains a term that the Tenant will pay \$35.00 for each late rent payment.

The Landlord claimed that the Tenant did not give her notice that she was moving out. The Landlord said that she discovered the Tenant had moved out after a neighbour advised her that she saw a moving truck at the rental unit. The Landlord said she went to the rental unit the following day and discovered that it was empty. The Landlord claimed that she was unable to re-rent the rental unit until January 15, 2009.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that there are arrears of rent for October and November 2009 in the amount of \$1,200.00.

Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear months notice in writing that they are ending the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that she incurs as a result. I find that the Tenant did not give the Landlord written notice that she was ending the tenancy and must compensate the Landlord for a loss of rental income for December 2009 in the amount of \$600.00.

Section 7 of the Regulations to the Act says that a Landlord may charge a late payment fee provided that the tenancy agreement contains a term to that effect and the amount of the fee is no more than \$25.00. Consequently, I find that the Landlord may charge only \$25.00 for late rent payments for each of August, October and November 2009 for a total of \$75.00. As the Landlord has been successful in this matter, she is also entitled to recover the \$50.00 filing fee for this proceeding.

I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent:	\$1,200.00
Loss of rental income:	\$600.00
Late payment fees:	\$75.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,925.00
Less: Security deposit:	(\$300.00)
Accrued interest:	<u>(\$2.30)</u>
Balance owing:	\$1,622.70



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Conclusion

A monetary order in the amount of **\$1,622.70** has been issued to the Landlord and a copy of the Order must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court 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: September 14, 2009.

Dispute Resolution Officer