



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, (MND), (MNDC), MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a monetary order for unpaid utilities, for compensation for carpet cleaning expenses and liquidated damages as well as to recover the filing fee for this proceeding and to keep the Tenants' security deposit.

The Landlords said they served the Tenants with the Application and Notice of Hearing by registered mail to the Tenants' forwarding address. Based on the Landlords' evidence, I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are there arrears of utilities and if so, how much?
2. Are the Landlords entitled to compensation for carpet cleaning expenses and liquidated damages?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2009 and was to expire on February 28, 2010, however it ended on July 31, 2009 when the Tenants moved out. Rent was \$1,150.00 plus utilities. The Tenants paid a security deposit of \$575.00 at the beginning of the tenancy.

The Landlords said that the Tenants did not pay utilities for the period April 14, 2009 to July 31, 2009 in the amount of \$410.25. The Landlords also said that a term of the tenancy agreement was that the Tenants would pay \$500.00 if they ended the tenancy early. The Landlords further claimed that the Tenants did not have the carpets in the rental unit professionally cleaned at the end of the tenancy as required under the tenancy agreement.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that there are utility arrears in the amount of \$410.25 and award the Landlords that amount. I also

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find that the Landlords are entitled to recover carpet cleaning expenses in the amount of \$89.75.

RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into otherwise it will be held to be a penalty and will be unenforceable. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The Landlords claim that the liquidated damages were intended to compensate them for their time and expenses for advertising and showing the rental unit to prospective tenants. In the circumstances, I find that the liquidated damages clause is enforceable and that the Landlords are entitled to recover \$500.00.

As the Landlords have been successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial satisfaction of the damage award. The Landlords will receive a monetary order for the balance owing as follows:

Unpaid utilities:	\$410.25
Carpet cleaning:	\$89.75
Liquidated damages:	\$500.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,050.00
Less: Security deposit:	(\$575.00)
Accrued interest:	<u>(\$0.00)</u>
Balance owing:	\$475.00

Conclusion

A monetary order in the amount of **\$475.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: October 13, 2009.

Dispute Resolution Officer