



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, FF (MNSD)

Introduction

This matter dealt with an application by the landlords for a Monetary Order for unpaid rent and utilities, and to recover the filing fee for this proceeding. The landlords have requested to amend their application to keep all or part of the security deposit in payment of the rent arrears and to adjust their claim to include rent arrears for October and a loss of income for November. Due to the time frame in hearing this application I have allowed this amendment. 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.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenants by registered mail on September 22, 2009.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and utilities and if so, how much?
- Are the landlords entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

This month to month tenancy started on August 01, 2009. Rent for this unit was \$850.00 per month which was due on the 1st of each month. The tenants paid a security deposit of \$425.00 on August 01, 2009.

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The tenants gave the landlords a one month written notice to end the tenancy on August 24, 2009, to vacate the rental unit on September 30, 2009. The tenants did not move out until November 02, 2009.

The landlords claims the tenants did not pay the full amount of rent for August, 2009 which left a balance owing of \$25.00. The landlords claims the tenants did not pay rent for September, 2009 and the landlords issued the tenants with a 10 Day Notice to End Tenancy for unpaid rent. The landlords claim the tenants did not pay rent for October, 2009. The tenants did not vacate the rental unit until November 02, 2009. The landlords testify that they told the tenants they could stay after September 30, 2009 only if they paid the rent owing for September and October, 2009. The landlord requests a loss of income for November as the tenants overstayed in the rental unit after they gave notice to end the tenancy for September 30, 2009.

The tenants claim they did pay rent to the landlords' son for September, 2009 and that he gave them a receipt for the amount paid. The tenants have produced a hand written receipt in their own hand writing with a signature at the top of the receipt. The tenants claim the landlords changed the locks on the laundry room door and the mailbox and they withheld the rent because of this. They also dispute the amount of utilities owed to the landlord because they lost their laundry facilities. The tenants have provided a copy of the utility bill with signed notations from the landlords in a margin showing the tenants paid \$75.00 towards the utility bill on October 03, 2009. The tenants claim the landlord told them they could stay after the effective date of their notice therefore they dispute the landlords additional claim for a loss of income for November, 2009.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenant has provided the receipt she claims the landlord's son gave them for Septembers rent. However, having compared the signature on the receipt I find it does not match the landlord's sons' signature in the evidence provided by the landlords. The burden of proof is on the tenants in this instance to proved sufficient proof that this signature is the landlord's sons. Therefore, I find that this burden of proof has not been met. The tenant has not provided sufficient evidence to show that the hand written rent receipt is authentic. The landlords have also provided a copy of the

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10 Day Notice to End Tenancy for unpaid rent for September, 2009. The tenants admit that they did not pay rent for October, 2009. The *Residential Tenancy Act* section 26 states:

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony and evidence, I find that the landlords have established their claim for unpaid rent. Therefore, I find the tenant owes the balance of rent for August, 2009 of \$25.00 and rent for September and October, 2009 of \$1,700.00.

The tenant disputes the amount owing for the utility bill stating that the landlords had locked them out of the laundry room and therefore they should not have to pay half of the BC Hydro bill. The tenants have also provided evidence of the landlord's signatures and notations on the utility bill showing the tenants paid \$75.00 towards this bill on October 03, 2009. As the landlords admit they did change the lock on the laundry room door on September 15, 2009, I have reduced the tenant's share of the utility bill accordingly. The total bill for Hydro for the period was \$332.92 the tenants share of this would have been \$166.46. The tenants have shown that they paid \$75.00 towards this amount which left a balance of \$91.46. I have reduced the amount owed by the tenants due to the loss of the use of the laundry facilities and feel it would be unfair of the landlords to charge the tenants 50% of the bill when they did not use the laundry room from September 15, 2009. Therefore, I have deducted \$50.00 from this bill and find the tenants owe a balance of \$41.46 for utilities.

I also find, pursuant to Section 38, that the landlords may retain the full security deposit of \$425.00 towards the outstanding rent.

I find the landlords have not provided sufficient evidence to support their claim for loss of revenue for November, 2009 due to the tenants leaving the rental unit in an unclean state and with a broken window. Therefore, I dismiss this section of the landlords claim **with leave** to reapply.



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As the landlords have been partially successful with their claim they are also entitled to recover the \$50.00 filing fee paid for this application. A Monetary Order has been issued for the following amount;

Rent arrears for August, September and October	\$1,725.00
Filing fee	\$50.00
Less security deposit	(-\$425.00)
Total amount owing to the landlords	\$1,391.46

Conclusion

I HEREBY FIND in partial favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,391.46**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords claim for loss of revenue and damage to the rental unit is dismissed **with leave to reapply**.

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: November 05, 2009.

Dispute Resolution Officer