

DECISION

Dispute Codes OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damages to the rental unit, to recover a late payment fee and the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts. The Landlord's agent claimed that the tenancy has ended and as a result, she withdrew her application for an Order of Possession.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing by registered mail on February 26, 2010. Based on the evidence of the Landlord, I find that the Tenant was served as required by s. 89 of the Act with the Landlord's hearing package and the hearing proceeded in the Tenant's 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 damages to the rental unit and if so, how much?
3. Is the Landlord entitled to recover a late payment fee?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2009 and expired on February 28, 2010 (at which time the Tenant moved out). Rent was \$875.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$437.50 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for February 2010 when it was due and as a result, she was served with a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord said that rent for February 2010 remains unpaid. The Landlord claimed that clause 10 of the Parties' tenancy agreement provides for the payment of a \$25.00 late rent fee.

The Landlord also claimed that the Tenant damaged the deck of the rental unit when the peat filled pot she was using to put out cigarettes caught on fire and burned the through the vinyl deck covering to the wood beneath. The Landlord provided an invoice for the cost of that repair.

Analysis

In the absence of any evidence from the Tenant to the contrary, I find that there is unpaid rent for February 2010 in the amount of \$875.00 and I award the Landlord that

amount. I also find that the Landlord is entitled to recover a \$25.00 late payment fee pursuant to a clause of the Parties' tenancy agreement to that effect.

Section 32 of the Act says that a Tenant is responsible for repairing damages caused by her act or neglect but is not responsible for reasonable wear and tear. Based on the evidence of the Landlord, I find that the damage to the deck of the rental unit was caused by the Tenant's neglect and as a result, I find that the Landlord is entitled to recover the repair expenses in the amount of \$420.00.

As the Landlord has been successful in this matter, she is entitled to recover the \$50.00 filing fee she paid for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the unpaid rent. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent:	\$875.00
Late fee:	\$25.00
Deck repair:	\$420.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,370.00
Less: Security deposit:	(\$437.50)
Accrued interest:	<u>(\$0.00)</u>
Balance owing:	\$932.50

Conclusion

A Monetary Order in the amount of **\$932.50** has been issued to the Landlord and a copy of it 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: March 18, 2010.

Dispute Resolution Officer