

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. At the beginning of the hearing, the Landlord also claimed that the Tenants moved out and as a result, he withdrew his application for an Order of Possession.

Although the Landlord's application names another party as a tenant, I find that this person was not a party to the tenancy agreement and is therefore not properly named as a tenant in these proceedings. Consequently, the style of cause is amended to include only the Tenants named on the tenancy agreement.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on April 24, 2010. The Landlord said a notification card was left for the Tenants on April 27, 2010 however the Tenants did not pick up the hearing packages. As a result, the Landlord said he mailed the Tenant, N.B., a copy of the hearing package by regular mail to a forwarding address he provided. Section 90 of the Act deems a document served by mail to have been received by the recipient 5 days later. Consequently, I find that by serving the Tenants by registered mail, they were served as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

### Issues(s) to be Decided

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This fixed term tenancy started on July 1, 2009 and was to expire on June 30, 2010 however it ended on April 28, 2010 when the Tenants moved out. Rent was \$1,200.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$600.00 at the beginning of the tenancy.

The Landlord said the Tenants' rent cheque for December 2009 was returned for non-sufficient funds and they subsequently paid \$400.00 leaving arrears of \$800.00. The Landlord said the Tenants' rent cheque for January 2010 was also returned for non-sufficient funds and they subsequently paid \$800.00 leaving arrears of \$400.00. The Landlord said the Tenants' rent cheque for March 2010 was returned for non-sufficient funds and the Tenants subsequently paid \$840.00 leaving arrears of \$360.00. The Landlord also said that the Tenants' rent cheque for \$1,200.00 did not clear because

they closed that account and that amount remains in arrears. Consequently, the Landlord says the Tenants have rent arrears of \$2,760.00 and he also seeks to recover 4 NSF fees of \$25.00 each for a total of \$100.00.

The Landlord said the Tenants also have utility arrears however he was uncertain of the amount now owing as he believed the Tenants' utility deposit had been applied to the delinquent account.

### Analysis

In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears of \$2,760.00 and that the Landlord is entitled to recover that amount. Section 7(c) of the Regulations to the Act says that a Landlord may recover a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. Consequently, I find that the Landlord is also entitled to recover \$100.00 representing 4 NSF fees from the Tenants' returned cheques. As it was unclear at the time of the hearing what the final amount of the utility arrears were, that part of the Landlord's claim is dismissed with leave to reapply.

As the Landlord has been successful in this matter, he is entitled pursuant to s. 72 of the Act to recover the \$50.00 filing fee for this proceeding from the Tenants. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing of \$2,310.00.

### Conclusion

The Landlord's application for utility arrears is dismissed with leave to reapply. A Monetary Order in the amount of **\$2,310.00** has been issued to the Landlord 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: June 08, 2010.

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Dispute Resolution Officer