



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MND, MNR, MHSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 14, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the landlord entitled to compensation for damage to the unit and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on May 5, 2009 as a month to month tenancy. Rent is \$775.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$387.50 on May 5, 2009.

The Landlord said that the Tenant did not pay \$775.00 of rent for June, 2010 when it was due and as a result, on June 3, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 3, 2010 on the door of the Tenant's rental unit. The Landlord said the Tenants moved out June 14, 2010 and did not pay the unpaid rent for June, 2010. As the Tenants have moved out of the rental unit the Landlord said he withdraws the request for an Order of Possession from the application as he has possession of the rental unit.

The Landlord also sought to recover \$350.00 for replacing drapes in the rental unit. The move in condition report dated May 19, 2009 indicates the rental unit had drapes and were check off as good condition. In addition the Landlord said the condition report indicates a door was missing on the bedroom and he has included the missing door in his application for damages. He said he withdraws the missing door from his application.

Analysis

Section 46 of the Act states that within 5 days of receiving A Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution.

The Tenant was served the Notice to End Tenancy by posting it on the Tenant's door on June 3, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 11, 2010. The Tenants moved out June 14, 2010 without notice to the Landlord.

Section 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 the right under this Act to deduct all or a portion of the rent.

I find that the Landlord is entitled to recover a portion of unpaid rent for June in the amount of \$516.66 (\$775.00 X 20 of 30 days of September). The Landlord has an obligation to mitigate his damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible. I further find that the Landlord is entitled to recover damages for the replacement of the drapes in the amount of \$350.00.

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



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	Rent arrears	\$516.66
	Damages	\$350.00
	Recover Filing Fee	<u>\$ 50.00</u>
	Subtotal	<u>\$916.66</u>
Less	Security Deposit	\$387.50
	Interest	<u>\$ 0.00</u>
Balance Owing		<u>\$529.16</u>

Conclusion

A Monetary Order in the amount of \$529.16 has been issued to the Landlord. A copy of the Orders must be served on the Tenants; the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

This decision is made on the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.
