



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 to recover the filing fee for this proceeding. At the beginning of the hearing the Landlord claimed that the tenancy had ended and as a result, he withdrew his application for an Order of Possession and sought to amend his claim to keep the Tenant's security deposit. I find that it would serve no purpose to make the Landlord re-apply for this relief and would likely only result in additional costs to the Tenant and as a result, the Landlord's application is amended to include a claim to keep the Tenant's security deposit.

The Landlord said he served the Tenant in person on August 30, 2010 with the Application and Notice of Hearing (the "hearing package"). Based on the evidence of the Landlord, I find that the Tenant has been 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. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started sometime prior to August 1, 2010 (when the Landlord purchased the rental property) and ended on September 26, 2010 when the Tenant moved out. Rent was \$1,300.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$433.00.

The Landlord said the previous owner served the Tenant with a 2 Month Notice to End tenancy on July 26, 2010 which was to take effect on September 30, 2010. The Landlord said the Tenant said he was going to move out at the end of August 2010 and withheld his rent for that month. However, the Landlord said the Tenant did not move out at the end of August and did not pay rent for that month or for the month of September 2010.



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Analysis

Section 51 of the Act says that a Tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of Property is entitled to compensation equivalent to one month's rent if they move out early or if they stay to the effective date of the Notice, they may withhold their last month's rent.

Based on the evidence of the Landlord, I find that the Tenant did not pay rent for August or September 2010 and that he was entitled pursuant to s. 51(1.1) to withhold only one month's rent. Consequently, I find that there are rent arrears of \$1,300.00. I also find pursuant to s. 72 of the Act that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding from the Tenant.

I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent:	\$1,300.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,350.00
Less: Security deposit:	<u>(\$433.00)</u>
Balance owing:	\$917.00

Conclusion

A monetary order in the amount of **\$917.00** 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: October 18, 2010.

Dispute Resolution Officer