Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

<u>Dispute Codes</u>   MND, MNR, MNSD, FF

<u>Introduction</u>

This matter dealt with an application by the Landlord for 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 retain all or part of the damage or security deposit as partial payment of the monetary claim

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 16, 2010. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

<u>Issues(s) to be Decided</u>

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

<u>Background and Evidence</u>

This tenancy started on May 1, 2010 as a month to month tenancy. Rent was $1,000.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of $500.00 on May 1, 2010.

The Landlord said that the Tenants did not pay $1,000.00 of rent for June, 2010, $1,000.00 of rent for July, 2010 and $1,000.00 of rent for August, 2010 when it was due and as a result on August 3, 2010 she posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2010 on in the Tenants' door. The Landlord said she also sent a copy of the 10 Day Notice to End Tenancy by registered mail on August 3, 2010.

The Landlord further indicated that the Tenant moved out of the rental unit on or about the first week of August, 2010. The Landlord said she believes the Tenant abandoned the rental unit and moved back to Ontario. She said she talked to them on the phone on August 10, 2010 and they said they were in Ontario and had no money to pay the

rent they owed her. The Tenants left all their belongings which the Landlord has cleaned up, taken to the dump or has in storage.

The Landlord also sought to recover damages to the rental unit. The Landlord said the rental unit was left in a complete mess with broken furniture, house hold effects and clothing left on the floor throughout the unit. The Landlord provided photographs of the unit after the Tenants moved out. Her claims appear to be accurate. The Landlord said she is claiming $600.00 for cleaning the unit, $100.00 for some painting to cover writing on the walls and $160.00 for a receipt to dispose of garbage. The Landlord is also claiming $10.27 for registered mail costs and 3 late payment fees of $35.00 each for late rent payments.

The Landlord also said she is requesting to recover the filing fee of $50.00 for this proceeding from the Tenants.

Analysis

Section 26 (1) says 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.

I find, from the evidence and testimony of the Landlord that the Tenant has not paid the June,2010 rent of $1,000.00, the July, 2010 rent of $1,000.00 and the August, 2010 rent of $1,000.00 and the Tenant did not have the right under this Act to deduct all or a portion of the rent. I find the Tenant is responsible for the unpaid rent of $3,000.00 for June, July and August, 2010.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. The Landlord said that she has possession of the unit; therefore an Order of Possession was withdrawn from the application.

Section 37 (2) (a) says when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find that the Tenants abandon the unit leaving the unit unclean and with considerable garbage in it. I find this is not normal wear and tear and the Landlord is justified in

claiming 45 hours of labour at $15.00 per hour to clean and paint the unit.   The Landlord is also entitled to recover the cost to dispose of the garbage in the amount of $160.00.

I find the Landlord is not entitled to the late charges of $105.00 as there is no written tenancy agreement that includes the any charges for late payment. I also dismiss the claim for $10.27 for the costs of the registered mail for the application as that is a normal business cost for a Landlord.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant 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 as partial payment of the rent arrears and damages. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	$ 3,000.00
	Damages	$ 835.00
	Recover filing fee	$ 50.00
	Subtotal:	$ 3,885.00
Less:	Security Deposit	$ 500.00
	Balance Owing	$ 3,385.00

Conclusion

A Monetary Order in the amount of $3,385.00 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 authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.