



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 18, 2010. Based on the evidence of the Landlord's agent, 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. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and fees and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on January 16, 2010 as a fixed term tenancy with an expiry date of July 31, 2010. Rent was \$1,095.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$547.50 on December 28, 2009.

The Landlord said that the Tenant gave written notice to move out of the unit on May 31, 2010 to move out June 30, 2010. This vacancy date was one month earlier than the end of the tenancy agreement, which was July 31, 2010. The Landlord informed the Tenant by letter dated June 1, 2010 that the Tenant was responsible for the rent until July 31, 2010 unless the Landlord was successful in renting the unit to a new tenant prior to July 31, 2010. The Landlord continued to say that she wrote the Tenant another letter dated August 3, 2010 indicating that the Landlord had been unsuccessful in renting the unit in July and the Tenant was responsible for the July rent in the amount of \$1,095.00 and a \$25.00 late fee. The Landlord say the Tenant said that she understood this and would pay the July, 2010 rent in the amount of \$1,095.00 and the late fee of

\$25.00. The Landlord's agent continued to say the Tenant did not pay the July rent or late fee. As well in that letter the Landlord said they would retain the remaining security deposit of \$387.50 as partial payment of the unpaid rent. The landlord said the balance owing was \$732.50.

The Landlord's agent said that they advertised the unit starting in June, 2010 in the newspaper and online. She said they had a showing in June and a couple of showings in July, 2010, but they were unsuccessful in renting the unit before July 31, 2010. The Landlord's agent said the unit was rented on October 1, 2010.

The Landlord's agent also requested compensation of \$50.00 from the Tenant to pay the filing fee for this proceeding.

Analysis

Section 45(2) says a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 44 (1)(c) says a tenancy may end if the landlord and tenant agree in writing to end the tenancy;

As there is no written agreement between the Landlord and the Tenant ending the tenancy earlier than the fixed term in the tenancy agreement of July 31, 2010, therefore; I find that the Tenant is responsible to pay the July, 2010 rent of \$1,095.00.



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Section (1)(d) of the Regulations says a landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

Clause #9 in the tenancy agreement dated December 18, 2009, states a late fee of \$25.00 can be charged for late payments. I find the Tenant has not paid the July rent and that the Tenant is responsible for a late fee of \$25.00.

The Landlord's agent and Tenant completed a move out inspection report on July 2, 2010, which indicated that the Tenant agreed that the Landlord could retain \$160.00 of the security deposit to replace a door. The Landlord's agent has requested the remaining security deposit of \$387.50 be retained to partially pay the unpaid rent. I find for the Landlord and order the Landlord to retain the remaining the Tenant's remaining deposit of \$387.50 as partial payment of unpaid rent.

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. The Landlord will receive a monetary order for the balance owing as following:

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| Rent arrears: | \$1,095.00 |
| Late payment fee | \$ 25.00 |
| Recover filing fee | \$ 50.00 |
| Subtotal | \$ 1,170.00 |

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| Less Remaining Security Deposit | \$ 387.50 |
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| Balance Owing | \$ 782.50 |
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Conclusion

A Monetary Order in the amount of \$782.50 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: 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*.