



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MND, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, damage to the rental unit, money owed, or compensation for damage or loss; and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

The Witness for the Landlord stated that she personally served copies of the Application for Dispute Resolution and Notice of Hearing to the male Tenant at his home on July 07, 2010. In the absence of evidence to the contrary, I find that these documents were served on the male Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however he did not appear at the hearing. The hearing was conducted in his absence.

The Witness for the Landlord stated that she left copies of the Application for Dispute Resolution and Notice of Hearing for the female Tenant with the male Tenant when she served his documents on July 07, 2010. I find that these documents were not served on the female Tenant in accordance with section 89 of the *Act*.

The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 89(1) of the *Act*. In this case only the male Tenant was properly served with the Application for Dispute Resolution and Notice of Hearing. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the female Tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the *Act* the monetary claim against her is dismissed without leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to financial compensation for unpaid rent, for late/NSF fees, for disposal fees and the fee for filing the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Act*.

Background and Evidence

The female Landlord stated that this tenancy began on April 01, 2006; that the Tenants were required to pay monthly rent of \$1,300.00 on the first day of each month; that the Tenants paid a security deposit of \$650.00; and that the Tenants vacated the rental unit on, or about, November 26, 2010.

The Landlord stated that the Tenants did not pay any rent for November of 2010. She stated that the female Tenant provided the Landlord with written authority to apply the security deposit to the outstanding rent for November of 2010, a copy of which was submitted in evidence. The Landlord stated that she will apply the \$650.00 security deposit to the rent arrears and that she is seeking compensation for the outstanding \$650.00 rent from November.

The Landlord has applied for compensation, in the amount of \$425.00 for late payment and NSF fees. The Landlord acknowledged that the tenancy agreement does not indicate that a fee will be charged for late payment of rent or when a rent cheque is returned due to insufficient funds. The Landlord submitted a document from the female Tenant, in which she acknowledged owing late fees/NSF fees of \$525.00.

The Landlord is claiming compensation of \$11.00 for disposing of garbage left by the Tenants at the end of the tenancy. The male Landlord stated that the Tenants left a large amount of garbage in the garage and that he personally disposed of the garbage at the landfill. The Landlord submitted a receipt to show that \$11.00 was paid for disposal fees.

Analysis

I find that the Tenants entered into a tenancy agreement with the Landlord that requires the Tenants to pay monthly rent of \$1,300.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants have not paid rent for November of 2010. I find that the Landlord has agreed to retain the security deposit in partial compensation of the rent that was due. I therefore find that the Tenants are required to pay the remaining rent of \$650.00, pursuant to section 26(1) of the *Act*.

Section 7(1) of the *Residential Tenancy Regulation* authorizes Landlords to charge a fee of up to \$25.00 when rent is not paid on time or when a Tenant tenders a cheque that is not honoured by the Tenant's financial institution. Section 7(2) of the *Residential Tenancy Regulation* stipulates that a landlord may only charge these fees if the tenancy agreement provides for that fee. As there is no evidence that the tenancy agreement indicates either of these fees will be charged, I find that the Landlord does not have

authority to collect these fees. On this basis, I dismiss the Landlord's application to recover \$425.00 in NSF/late fees.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants left garbage at the rental unit at the end of the tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*, which in these circumstances is \$11.00 for disposal fees.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$711.00, which is comprised of \$650.00 in unpaid rent; \$11.00 for disposal fees; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$711.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: November 19, 2010.

Dispute Resolution Officer