



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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, 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 posting it on the Tenant's door on December 3, 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 keep the Tenant's security deposit?

Background and Evidence

This tenancy started on July 1, 2010 as a 1 year fixed term tenancy with an expiry date of June 30, 2011. Rent was \$925.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$462.50 on June 8, 2010.

The Landlord said the tenancy ended on December 16, 2010 when the Tenant moved out and a move out condition inspection report was completed. The Tenant gave the Landlord his written forwarding address on the move out condition inspection report. As well, the Landlord said the Tenant agreed to the carpet cleaning as indicated on the move out condition inspection report. The carpet cleaning is a requirement of the tenancy agreement in clause C. of the addendum in the tenancy agreement. The Landlord said he is claiming the carpet cleaning costs of \$106.40 against the Tenant's security deposit.

The Landlord said that the Tenant did not pay \$925.00 of rent for December, 2010, 2010 when it was due and as a result, on December 3, 2010 he posted a 10 day Notice



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

to End Tenancy for Unpaid Rent or Utilities dated December 3, 2010 on the Tenant's door of the rental unit. The Landlord said his application also claims rent for January, 2011 as the unit is not rented as of yet.

The Landlord continued to say that as he does have possession of the rental unit he is withdrawing the application for an Order of Possession.

The Landlord also sought to recover a \$25.00 late payment fee for December, 2010, rent as the late fee is written into the tenancy agreement.

In addition the Landlord requested to recover from the Tenant the \$50.00 filing fee for this proceeding.

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 that the Tenant has not paid the overdue rent and has not applied for dispute resolution and does not have the right to withhold part or all of the unpaid rent. Consequently, I find pursuant to s. 67 of the Act that the Landlord is entitled to a Monetary Order. The Landlord is entitled to recover unpaid rent for December, 2010 in the amount of \$925.00. I further find that the Landlord is entitled to recover the late charges of \$25.00 for the December, 2010 rent.

In addition as the Tenant agreed to the carpet cleaning in the tenancy agreement and on the move out condition inspection report I find the Landlord is entitled to the carpet cleaning costs of \$106.40.

Both the Landlord and the Tenant agreed to end the tenancy. The Landlord indicated this with his Notice to End Tenancy for Unpaid Rent dated December 3, 2010 and the Tenant provide the Landlord with a notice to end the tenancy in his written note to the Landlord dated November 23, 2010, with an effective date of December 31, 2010. I find that the Landlord did not have a loss of rental income for January, 2011 as a result of this tenancy, he had ample time to advertise and rent the unit during December, 2010 therefore; I dismiss the Landlord's application for loss of rental income of \$925.00 for January, 2011.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

38(4) and s. 72 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 following:

	Rent arrears:	\$ 925.00
	Late payment fees	\$ 25.00
	Carpet cleaning	\$ 106.40
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,106.40
Less:	Security Deposit	\$ 462.50
	Subtotal:	\$ 462.50
	Balance Owing	\$ 643.90

Conclusion

A Monetary Order in the amount of \$643.90 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*.

Dated: January 11, 2011.

Residential Tenancy Branch