

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlords said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 26, 2010. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenants and the Landlords in attendance.

### 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 if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### Background and Evidence

This tenancy started on October 1, 2009 as a 1 year tenancy with an expiry date of September 30, 2010. Rent was \$2,200.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$1,000.00 on September 24, 2009 and a pet deposit of \$100.00 on October 1, 2009.

The Landlords said that the Tenants did not pay \$2,200.00 of rent for each month of June, July and August 2010, when it was due and as a result, on August 5, 2010, he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 5, 2010 to the Tenants. The Landlords said the Tenants moved out on or about November 1, 2010 and did not pay the unpaid rent for September and October, 2010 in the amount of \$2,200.00 for each month.

As well the Landlord said that he told the Tenants there were water bills that were unpaid in the amount of \$270.00, but he said he did not give the Tenants a written demand for the payment of these utilities. The Landlord continued to say he would withdraw his claim for the unpaid utilities in the amount of \$270.00.

The Landlords continued to say that they had submitted a letter in the evidence package from the Tenants, in which the Tenants acknowledge the unpaid rent in the amount of \$11,000.00. The Tenant said he does owe the Landlord for 5 months of unpaid rent in the amount of \$11,000.00.

The Tenants said they have had difficulties with their business and as a result they could not pay their rent to the Landlords. The Tenant said he acknowledged the Landlord was a gentleman throughout the tenancy and he is sorry that things turned out the way they did, but he had little control of losing his business. The Tenant said that he has no income at the present time and has applied for credit counselling. The Tenant continued to say that he wants to pay the Landlord, but he is unable to at the present time, but he will try to pay the Landlord over time.

### Analysis

Section 26 (1) 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 the right under this Act to deduct all or a portion of the rent.

The Tenants did not have the right under the Act to withhold part or all of the rent for the last five months of the tenancy, June through to October, 2010, therefore I find in favour of the Landlord for the unpaid rent of \$2,200.00 for 5 months in the amount of \$11,000.00. As well the Landlords did not provide a written demand for their claim of \$270.00 for unpaid utilities, therefore I dismiss the claim for unpaid utilities on the grounds that the amount was not established and verified.

As the Landlords has been successful in this matter, they are also entitled to recover from the Tenants the \$100.00.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit and pet deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears	\$11,000.00
	Recover Filing Fee	<u>\$ 100.00</u>
	Subtotal	\$11,100.00
Less	Security Deposit	\$ 1,000.00

Pet Deposit	<u>\$ 100.00</u>
Subtotal	<u>\$ 1,100.00</u>
Balance Owing	<u>\$10,000.00</u>

### Conclusion

A Monetary Order in the amount of \$10,000.00 has been issued to the Landlords. 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*.

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Residential Tenancy Branch