



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC MNSD, FF

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

The Landlord's agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 22, 2010. Based on the evidence of the Landlord's agent, 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.

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 compensation for damage or loss and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2009 as a month to month tenancy. Rent was \$1,300.00 per month and 65% of the utilities bill payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$650.00, a pet deposit of \$200.00 and a utility deposit of \$150.00 on September 23, 2009.

The Landlord's agent said the tenancy ended on November 30, 2010 when the Tenants moved out. The Landlord's agent said that the Tenants did not pay \$1,150.00 of rent for October, 2010, \$1,300.00 of rent for November, 2010 and \$150.00 for utilities for November, 2010. The Landlord's agent said they did not submit the November, 2010 utility bill and she was unaware if the Landlord had given the utility bill to the Tenants.

In addition the Landlord requested to recover from the Tenants 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 Tenants have not paid the overdue rent and have not applied for dispute resolution and they do 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 October, 2010 in the amount of \$1,150.00 and the November, 2010 rent in the amount of \$1,300.00. With regard to the \$150.00 claim by the Landlord for utilities, as no evidence was submitted regarding the utility bill and it is unclear if the Tenants received a copy of the utility bill; I find the Landlord and the Landlord's agent have not established grounds to be awarded the outstanding utilities. The claim for \$150.00 in unpaid utilities is dismissed without leave to reapply.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenants 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 Tenants' security deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,450.00
	Recover filing fee	<u>\$ 50.00</u>
	Subtotal:	\$2,500.00
Less:	Security Deposits	<u>\$1,000.00</u>
	Subtotal:	\$1,500.00
	Balance Owing	\$ 1,500.00

Conclusion

A Monetary Order in the amount of \$1,500.00 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*.

Residential Tenancy Branch