



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting it on the Tenant's door mail on May 31, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

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 March 1, 2007 as a month to month tenancy. Rent was \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$337.50 on March 1, 2007. The tenancy ended on or just before May 31, 2011, as the Tenant moved out of the unit to a different unit in the same rental complex.

At the start of the hearing the Landlord said they had possession of the unit and therefore they were withdrawing the request for an Order of Possession.

The Landlord said that the Tenant did not pay \$750.00 of rent for May 2011, when it was due and as a result, on May 13, 2011, they registered mailed a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated May 13, 2011.

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

The Tenant said he had received a 2 Month Notice to End Tenancy for Landlord's use of the Property dated May 5, 2011 and he thought that under this Notice he did not have to pay the May, 2011 rent. As well the Tenant said he had rented a different unit in the rental complex starting June 1, 2011 and as he had to pay the security deposit he did not have the money to pay the rent on the old rental unit. The Tenant said the May rent of \$750.00 is not paid for the rental unit at the dispute address. The Tenant said he did receive the 10 Day Notice to End Tenancy for unpaid rent on May 20, 2011.

The Tenant continued to say when he moved out the unit was left in good condition.

The Landlord said the unit smells of smoke and there is repairs and clean up to be done if the unit is to be sold.

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 with hold 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 May, 2011 in the amount of \$750.00 as stated in the 10 Day Notice to End Tenancy which is the Notice in effect for this situation.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant 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 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:	\$ 750.00	
	Recover filing fee	<u>\$ 50.00</u>	
	Subtotal:		\$ 800.00
Less:	Security Deposit	\$ 337.50	
	Accrued Interest	<u>\$ 9.37</u>	
	Subtotal:		\$ 346.87
	Balance Owing		\$ 453.13

Conclusion

A Monetary Order in the amount of \$453.13 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*.

Residential Tenancy Branch