



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for loss or damage under the Act and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 29, 2011. 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 Tenants' absence.

The Landlord said at the start of the hearing that the tenancy had ended and the Tenants moved out on July 31, 2011. As a result the application for an Order of Possession is not required.

Issues(s) to be Decided

1. Are there damages or losses and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on May 1, 2011 as a month to month tenancy. Rent was \$500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 on May 6, 2011.

The Landlord said the tenancy ended on July 31, 2011 when the Tenant moved out. The Landlord said there was no move in or move out condition inspection reports done and the Tenants did not give him a forwarding address although the Landlord did ask the Tenant for his new address and his place of employment.

The Landlord said that the Tenant did not pay \$500.00 of rent for June, 2011 and \$500.00 of rent for July, 2011, when it was due. Now that the Tenant has moved out the Landlord is seeking compensation for the unpaid rent and unpaid utilities of \$47.16.

In addition the Landlord said he is applying for damages of \$500.00 for an injury he received when helping the Tenant move a refrigerator, \$1,000.00 of lost rental income when two other tenants moved out because of the Tenant, \$240.00 for storage of the Tenants piano which the Tenant had in the hall of the rental complex until he moved out on July 31, 2011, \$55.00 for the disposal of a couch the Tenant left at the rental unit and \$45.00 for damages to the walls in the rental unit.

The Landlord presented a witness F.K. who said that she believed the Tenant was the cause of the other two tenants moving out. She said the Tenant had his belongings throughout the rental complex and he did not clean up.

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 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 June, 2011 in the amount of \$500.00 and unpaid rent for July, 2011 in the amount of \$500.00. I further find that the Landlord is entitled to recover the utilities in the amount of \$47.16.

In regard to the damages the Landlord is claiming the Landlord has not established grounds to prove his injury was caused by the neglect of the Tenant and he did not prove an actual loss. The Landlord's claim for \$500.00 due to the hand injury is dismissed without leave to reapply.

In addition the Landlord did not submit evidence that proved the Tenant was solely responsible for the other tenants moving; therefore I dismiss without leave to reapply the Landlord claim for \$1,000.00 for the other two tenants moving out.

With regards to the Landlord's claim for \$55.00 to dispose of a couch that he says the Tenant left behind and his claim for \$45.00 for wall damage the Landlord has not proven the claims by submitting receipts to establish the actual cost or loss, consequently I dismiss the Landlord's claim for \$55.00 and \$45.00 to dispose of the couch and for wall damage.

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 deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,000.00
	Unpaid Utilities	\$ 47.16
	Recover filing fee	<u>\$ 50.00</u>
	Subtotal:	\$1,097.16
Less:	Security Deposit	<u>\$ 250.00</u>
	Subtotal:	\$ 250.00
	Balance Owing	\$ 847.16

Conclusion

A Monetary Order in the amount of \$847.16 has been issued to the Landlord. A copy of the Order 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