



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

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

The Landlord's Agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 12, 2011. Based on the evidence of the Landlord's Agent, 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 absences.

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. Are there losses or damages to the Landlord and if so how much?
4. Is the landlord entitled to compensation for loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security and pet deposits?

Background and Evidence

This tenancy started on December 1, 2010 as a 1 year fixed term tenancy with an expiry date of November 30, 2011. Rent is \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$ 300.00 on November 9, 2010.

The Landlord's Agent said that the Tenant moved out of the rental unit during the month of May, 2011. The Agent continued to say that the Tenant did not advise him she was moving out prior to her leaving the rental unit. The Landlord's Agent said he found a note in the rental unit on June 1, 2011 saying the Tenant had moved out and it contained the Tenant's forwarding address and a request for the Landlord's Agent to send the Tenant's security deposit to that address.

The Landlord's Agent said he was applying for the unpaid May, 2011 rent of \$600.00 and a \$300.00 fee which is in the tenancy agreement if the tenancy is broken prior to the expiry date of the lease. The Landlord's Agent s said the \$300.00 fee is a fee that the Landlord pays the Landlord's Agent each time the rental unit is rented out. The Agent said the fee is in the tenancy agreement and it is indicated that it is a cost to re-rent the unit. The Landlord's Agent said it is not a penalty.

The Landlord's Agent also said he is seeking to recover the Landlord's filing fee for this proceeding of \$50.00 from the Tenant.

Analysis

Section 26 of the Act 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.

Section 45 of the Act says that a tenant may end a fixed term tenancy by giving the landlord a notice to end tenancy not earlier than one month after the landlord receives the notice and not earlier that than the date specified in the tenancy agreement.

The Tenant moved out of the rental unit before the expiry date of the tenancy agreement and did not give the Landlord proper notice therefore; I find the Tenant breached the tenancy agreement. As well, the Tenant did not have the right under the Act to withhold part or all of the May, 2011rent of \$600.00; therefore I find in favour of the Landlord for the unpaid rent of \$600.00 for May, 2011. As well the Landlord's has provide testimony and evidence that the fee of \$300.00 is not a penalty but an agreed to cost of renting the unit if the tenancy agreement is broken; therefore I find the re-renting fee of \$300.00 is the responsibility of the Tenant to pay.

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. 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:	\$ 600.00	
	Renting Fee	\$ 300.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$ 950.00
Less:	Security Deposit	\$ 300.00	
	Subtotal:		\$ 300.00
	Balance Owing		\$ 650.00

Conclusion

A Monetary Order in the amount of \$650.00 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