



Dispute Resolution Services

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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 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. At the beginning of the hearing the Parties confirmed that the tenancy has ended and as a result, the Landlord's agent withdrew her application for an Order of Possession.

The Landlord's agent said on August 20, 2011 she served the Application, Notice of Hearing and her evidence package (the "hearing package") on an adult person who did not reside in the rental unit but who was helping the Tenant to move out. Section 89(1) of the Act says that a Landlord's application for a monetary order must be served on a Tenant in person or by registered mail only. The Tenant admitted that she received these documents and for this reason, I find pursuant to s. 71(2)(c) of the Act that the Landlord's hearing package was sufficiently served for the purposes of the Act.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to recover late fees and NSF fees?
3. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This fixed term tenancy started on November 1, 2010 and was to expire on October 31, 2011 however it ended on August 20, 2011 when the Tenant moved out. Rent was \$925.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit and pet damage deposit of \$462.50 each at the beginning of the tenancy.

The Parties agree that the Tenant has not paid rent for August 2011. The Parties also agree that the Tenant was late paying rent for 6 months (ie. in December 2010 and January, March, May, June, July and August 2011). An addendum to the Parties' tenancy agreement contains a term authorizing the Landlord to charge late payment fees of \$20.00 and fees for returned cheques of \$25.00.

Analysis

Given the there is no dispute that rent remains unpaid for August 2011, I find that the Landlord is entitled to recover arrears of \$925.00.

Section 7(1) of the Regulations to the Act permits a Landlord to charge a late payment fee of no more than \$25.00 provided that there is a term in the Parties' tenancy agreement to that effect. This section also states that a Landlord may charge a Tenant for service fees charged by its financial institution for the return of a Tenant's cheque.

The Landlord provided a ledger which shows that the Tenant was charged an NSF fee of \$25.00 for January 2011, \$45.00 for "late/return fees" for 5 other months and a \$20.00 late fee for August 2011 for a total of \$270.00. The Landlord's ledger also shows that payments of \$160.00 were applied to this amount and as a result, the Landlord sought to recover the balance of \$110.00.

However, the Landlord provided no evidence at the hearing that it actually incurred bank charges of \$25.00 for returned cheques and therefore there is no evidence that the Landlord was entitled to charge the Tenant NSF fees of \$25.00. Consequently, I find that the Landlord is only entitled to claim late fees of \$120.00. As the Tenant has already paid \$160.00 for late fees, I find that she has made an overpayment of rent in the amount of \$40.00. For the same reasons, I find that the Landlord is not entitled to recover any further amounts with respect to late fees or NSF fees and that part of its application is dismissed without leave to reapply.

The Landlord is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the \$50.00 filing fee it paid for these proceedings. I Order the Landlord to keep the Tenant's security deposit and pet damage deposit in partial satisfaction of the monetary award. The Landlord will receive a Monetary Order for the balance owing as follows:

Unpaid Rent for August:	\$925.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$975.00
Less: Overpayment of rent:	(\$40.00)
Security deposit:	(\$462.50)
Pet deposit:	<u>(\$462.50)</u>
Balance owing:	\$10.00

The Landlord's agent also sought to recover cleaning expenses she said she incurred at the end of the tenancy, however the Landlord did not apply for this relief on her application for Dispute Resolution and as a result, I cannot deal with it in this matter.

Conclusion

A Monetary Order in the amount of **\$10.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. 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*.

Dated: September 20, 2011.

Residential Tenancy Branch