



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The 2nd tenant, R.R. was personally served with Notice of this hearing on August 24, 2011, at his place of work, by the landlord, with his wife present as a witness; however, R.R. did not attend the hearing. I find, pursuant to section 90 of the Act, R.R. was served on the day of personal delivery.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Preliminary Matter

The landlord confirmed that he has possession of the unit and no longer required an order of possession.

Background and Evidence

The tenant present at this hearing and landlord agreed that the tenant, R.R. owes the landlord \$650.00 for July and August, 2011, rent he did not pay. The tenants were co-tenants; however they had paid rent separately toward the end of the tenancy.

The tenant acknowledged damage to the windows and he had established that the replacement costs would be \$500.00; not the \$600.00 claimed by the landlord.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the landlord is entitled to compensation for unpaid July and August, 2011, rent in the sum of \$325.00 for each month; as confirmed by the tenant present at this hearing.

Based on the testimony of the tenant, who acknowledged the damage to the windows, I find that the landlord is entitled to compensation in the sum of \$500.00. The landlord did not provide any evidence of the cost of repair; however, based upon the tenant's suggested cost, I find that there is no dispute in relation to compensation owed to the landlord up to that amount. The landlord has failed to provide any verification of costs beyond the amount agreed to by the tenant. Therefore, the balance of the claim for damage is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$325.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,200.00, which is comprised of \$650.00 in unpaid June and July, 2011, rent, plus \$500.00 for damage to the rental unit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$325.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$875.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court 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 26, 2011.

Residential Tenancy Branch