



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPR, MNR, MND, MNSD, FF
 Tenants: CNR

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 3, 2011.

At the beginning of the hearing, the Landlord, S.A., said the Tenants vacated the rental unit on October 30, 2011. As the tenancy has ended, the Tenants' application to cancel a 10 Day Notice and the Landlords' application for an Order of Possession are dismissed without leave to reapply.

The Landlord, S.A., said he served the Tenants with the Application and Notice of Hearing (the "hearing package") in person on October 29, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

The copy of the Parties' tenancy agreement says the tenancy started on January 15, 2010, however, the Landlord, S.A., said the tenancy started on February 1, 2010. The Landlord said the Tenants moved out on October 30, 2011 without giving any notice. The Parties' tenancy agreement says rent is \$880.00 per month payable in advance on the 1st day of each month. The Landlord said the Tenants received a Notice of Rent Increase which increased their rent by \$44.00 effective February 1, 2011.

The Landlord, S.A., said the Tenants did not pay rent for October 2011 when it was due and as a result, on October 3, 2011 he served the Tenants in person with a 10 Day

Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord said the rent for October 2011 is still unpaid. The Landlord also said the Tenants did not leave the rental unit reasonably clean however he was unsure what his costs (if any) would be to do cleaning and repairs.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that rent is unpaid for October 2011. However, I find that there is no evidence to support the amount claimed by the Landlords. In particular, the Landlords did not provide a copy of the Notice of Rent Increase and the amount by which the Landlords increased the rent was more than was permitted by the regulations to the Act for 2011. Consequently, I find that the Landlords are only entitled to recover rent in the amount of \$880.00 as stated in the tenancy agreement.

As the Landlords have not yet determined what their costs will be to clean and/or repair the rental unit, I find that their application for this relief is premature and it is dismissed with leave to reapply. The Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding.

I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlords will receive a Monetary Order for the balance owing of \$490.00.

Conclusion

The Tenants' application is dismissed without leave to reapply. The Landlords' application for an Order of Possession is dismissed without leave to reapply. The Landlords' application for compensation for damages to the rental unit is dismissed with leave to reapply. A Monetary Order in the amount of **\$490.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: November 03, 2011.

Residential Tenancy Branch