



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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.

Preliminary Matter

The male respondent did not attend the hearing; however, he was served with Notice of the hearing, sent by registered mail to the rental unit address on January 20, 2012. A copy of a Canada Post mail receipt was supplied as evidence of service.

The tenants have vacated the rental unit; therefore the landlord did not require an Order of possession.

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 and fees?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2011; rent was \$725.00 per month, due on the first day of each month. A security deposit and pet deposit in the sum of \$362.50 each was paid. No move-in condition inspection report was completed; however, a move-out condition inspection was completed. The tenant agreed to a deduction from the security deposit in the sum of \$89.60 for carpet cleaning.

The tenants vacated the unit on January 31, 2012.

During the hearing the tenant agreed that they owed \$65.00 August, 2011, rent.

The tenant stated that they obtained 3 separate money orders during August, for payment of rent due on September 1, 2011. They placed the money orders in the mail box, as was the usual practice, but the landlord did not receive the payments. The tenant has considered obtaining a record of the money orders from the issuer in order to find out whether they were processed, but has yet to do so because of the \$30.00 fee charged for these records.

The tenant stated that they would give their rent payments to the past building manager and she would not always deposit the payments on time. The tenant stated that January, 2012, rent was paid late. The landlord submitted that December 2011, rent was paid on the 9th and 12th of the month and that January 2012, rent was made in 3 separate payments.

The landlord has requested late payments fees, as included in the tenancy agreement, of \$25.00 each for December 2011 and January 2012.

The landlord and tenant agreed that an August, 2011, rent cheque was returned as NSF; the landlord waived the request for a NSF fee.

Analysis

Based on the evidence before me I find that the landlord is entitled to compensation for unpaid August, 2011 rent in the sum of \$65.00 and unpaid September rent in the sum of \$725.00.

The tenants did not obtain any evidence that would support fraudulent action on behalf of the previous manager; however, if they were to do so and present evidence that any money orders for September, 2011, rent were in fact processed by an agent of the landlord, this may be taken into account at the time a monetary Order is enforced. In the alternative, the tenants have the option of requesting review of this decision within the required time-frame, should they obtain evidence that any September, 2011, rent payment monetary Orders were processed fraudulently.

I find that the landlord is entitled to late fees for January 2012, rent in the sum of \$25.00, as the tenants confirmed late payment that month.

In the absence of evidence that the landlord deposited the December payments when they were actually given I dismiss the claim for a December, 2011, late fee.

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 and in the amount of \$362.50, in partial satisfaction of the monetary claim.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant.

Therefore, I find that the landlord may retain the tenant's pet deposit in the amount of \$362.50, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$865.00, which is comprised of August, 2011, rent in the sum of \$65.00; September 2011 rent of \$725.00; a January 2012, late fee 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 and pet deposits in the amount of \$725.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$140.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord waived the claim for a NSF fee.

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: February 15, 2012.

Residential Tenancy Branch