



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, for compensation for expenses incurred as a result of enforcing an Order of Possession, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord, V.A., said that in mid-November 2011, the Tenant left a voice mail message asking her to return his security deposit to his residential address which he provided. The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") via registered mail to this address on December 2, 2011. Section 90 of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

I also note that the hearing was originally scheduled for February 9, 2011 however on December 13, 2011, the Residential Tenancy Branch mailed out new Notices of Hearing to both parties (to the addresses for service indicated on the Landlords' application) showing a hearing date of February 15, 2011.

Issue(s) to be Decided

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

Background and Evidence

This tenancy started on November 4, 2008. Rent was \$1,200.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$600.00 at the beginning of the tenancy. In previous proceedings heard on July 26, 2011, the Landlords applied for and were granted an Order of Possession to take effect on July 31, 2011. The Tenant applied for a Review of the Decision and Order however it was dismissed on August 9, 2011. On August 12, 2011, the Landlords applied for and subsequently, received a Writ of Possession from the Supreme Court of British Columbia and they hired a Bailiff who enforced that Order on August 16, 2011. As a

result of having to enforce the Order of Possession, the Landlords said they incurred the following expenses:

Bailiff fees:	\$2,460.75
Supreme Court fees:	\$120.00
Facsimile fees:	\$20.02
Registered Mail fees:	<u>\$9.73</u>
Subtotal:	\$2,610.50

The Landlords also claim that the Tenant did not pay rent for August 2011 and that they were unable to re-rent the rental unit for the remainder of August 2011.

Analysis

Section 7(1) of the Act says “if a landlord or tenant does not comply with the Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.”

I find that the Tenant was served with an Order of Possession that was to take effect on July 31, 2011 but that he failed or refused to deliver vacant possession of the rental unit to the Landlords. Consequently, I find that due to the Tenant's actions, the Landlords incurred court and bailiff expenses to get possession of the rental unit and as a result I find that they are entitled to recover those expenses in the amount of **\$2,580.75**. However, I find that the Landlords are not entitled to recover facsimile expenses of \$20.02 to send documents to each other or registered mail expenses to serve the Tenant with dispute resolution documents. The facsimile expenses were necessary because one of the Landlords resides in another community and therefore I find that it is not an expense for which the Tenant should be responsible. Furthermore, the registered mail expenses are costs associated with participating in a dispute resolution proceeding. The Act does not provide for the recovery of costs other than reimbursement of the filing fee. Consequently, the Landlords' application for facsimile and registered mail expenses is dismissed without leave to reapply.

In the absence of any evidence from the Tenant to the contrary, I find that rent is unpaid for August and that the Landlords are entitled to recover rent arrears for the period, August 1 – 16, 2011, in the pro-rated amount of **\$619.35** and a loss of rental income for the period, August 17 – 31, 2011, in the pro-rated amount of **\$580.65**. I also find that the Landlords are entitled pursuant to s. 72(1) of the Act to recover from the Tenant the **\$50.00** filing fee they paid for this proceeding. Consequently, I find that the Landlords are entitled to a total monetary award of \$3,830.75. I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$600.00 and accrued interest of \$1.43 (for a total of \$601.43) in partial payment of the monetary award. The Landlords will receive a Monetary Order for the balance owing of \$3,229.32.

Conclusion

A Monetary Order in the amount of **\$3,229.32** has been issued to the Landlords and a copy of it must be served on the Tenant. The Order may be filed in the Provincial (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: February 15, 2012.

Residential Tenancy Branch