



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

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 loss or damage under the Act, the regulations or the tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on January 23, 2012 and by personal delivery on January 26, 2012. 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.

At the start of the conference call the Landlord said that the Tenants moved out of the rental unit on January 28, 2012. The Landlord said she is withdrawing the application for an order of possession as she has possession of the rental unit.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on April 15, 2011 as a 1 year fixed term tenancy with an expiry date of April 15, 2012. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 on April 16, 2011.

The Landlord said that the Tenant did not pay \$850.00 of rent for October, 2011 and \$850.00 of rent for January, 2012 when it was due and as a result, on January 15, 2012 she personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 15, 2012 to the Tenants. The Landlord provided a proof of service that has the Tenant's signature on it as receiving the Notice. The Landlord said the Tenants have paid the rent for February, 2012, but she is not sure if the cheque will go through the bank or not.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

Analysis

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants did not have the right under the Act to withhold part or all of the rent for October, 2011 of \$850.00 or January, 2012 of \$850.00; therefore I find in favour of the Landlord for the unpaid rent in the amount of \$1,700.00 for two months of rent for October, 2011 and for January, 2012. As well the since the Landlord said the February rent cheque for \$850.00 was deposited in the Landlord's bank and she is unaware if it will clear the bank or not; I dismiss the Landlord's claim for unpaid rent for February, 2012 with leave to reapply.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears: (\$500.00 X 2)	\$1,700.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,750.00
Less:	Security Deposit	\$ 425.00
	Subtotal:	\$ 425.00
	Balance Owing	\$ 1,325.00



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Office of Housing and Construction Standards

Conclusion

A Monetary Order in the amount of \$1,325.00 has been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Dispute Resolution Officer