



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 28, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

At the start of the Hearing the Landlord said the Tenants moved out of the unit on June 10, 2012; therefore he no longer needs an Order of Possession. The Landlord's application for an Order of Possession is withdrawn.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on July 15, 2001 as a month to month tenancy. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 on July 15, 2001.

The Landlord said the tenancy ended on June 10, 2012 when the Tenant and his family moved out of the rental unit. The Landlord said the Tenant's daughter text messaged him on June 7, 2012 that they were moving out of the rental unit and they were not going to clean the rental unit. The Landlord continued to say the Tenants left the unit in an unclean state with garbage and damage throughout the unit. The Landlord said he may make an application for damages in the future, but today he would like to apply for the unpaid rent for May, 2012 of \$1,400.00 and the unpaid rent for June, 2012 of \$1,400.00 as well as retaining the Tenant's security deposit of \$625.00 as partial payment of the unpaid rent.



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In addition the Landlord requested to recover from the Tenant the \$50.00 filing fee for this proceeding.

Analysis

Section 26 (1) 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.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution and does not have the right to with hold part or all of the unpaid rent. Consequently, I find pursuant to s. 67 of the Act that the Landlord is entitled to a Monetary Order. The Landlord is entitled to recover unpaid rent for May, 2012 in the amount of \$1,400.00 and the unpaid rent for June 2012 of \$1,400.00 as the tenant did not give the Landlord proper Notice to End the Tenancy.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord 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 Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,800.00	
	Recover filing fee	<u>\$ 50.00</u>	
	Subtotal:		\$2,850.00
Less:	Security Deposit	\$ 625.00	
	Interest on Security Deposit	<u>\$ 31.18</u>	
	Subtotal		\$ 656.18
	Balance Owing		<u>\$ 2,193.82</u>



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Conclusion

A Monetary Order in the amount of \$2,193.82 has been issued to the Landlord. A copy of the Order must be served on the Tenant: 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*.

Residential Tenancy Branch