



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 convened as a result of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlords testified that the Notice and evidence was served on the tenant by registered mail on August 16, 2013 and a registered mail tracking number was provided in evidence prior to the hearing. The landlords stated that the registered mail package was addressed to the tenant at the rental unit address and that the tenant did not vacate the rental unit until September 1, 2013. Section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served on August 21, 2013. Based on the above, I find the tenant was served in accordance with the *Act*.

Preliminary and Procedural Matter

At the outset of the hearing, the landlords testified that the tenant vacated the rental unit on September 1, 2013, and as a result, requested to withdraw their claim for an order of possession as the landlords have already received possession of the rental unit back

from the tenant. I find that the landlord's withdrawal of their request for an order of possession does not prejudice the tenant in any way.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The landlords testified that a month to month tenancy agreement began on March 1, 2013. Monthly rent in the amount \$1,400.00 was due on the first day of each month. The tenant paid a security deposit of \$700.00 at the start of the tenancy which the landlords continue to hold.

The landlords testified that the tenant failed to pay August 2013 rent in the amount of \$1,400.00 and that the tenant failed to pay September 2013 rent of \$1,400.00 as the tenant was still occupying the rental unit on September 1, 2013, and that they suffered a loss of rent for September 2013 as a result.

The landlords testified that they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated August 4, 2013 indicating that \$1,400.00 was owing as of August 1, 2013 and wrote an effective vacancy date of August 14, 2013 on the 10 Day Notice. The landlords testified that the tenant did not dispute the 10 Day Notice or pay the \$1,400.00 owing for August 2013 rent, and subsequently owes \$1,400.00 for September 2013 as the tenant did not vacate until September 1, 2013 and left the rental unit damaged to the point where they still have not been able to re-rent the rental unit due to damage caused by the tenant. The landlords testified that the tenant did not provide his written forwarding address.

Analysis

Based on documentary evidence, the undisputed testimony of the landlords, and on the balance of probabilities, I find the following.

Monetary claim of the landlords – The landlords testified that the tenant failed to pay \$1,400.00 for August 2013 rent and the landlords suffered a loss of rent in the amount of \$1,400.00 for September 2013 rent for a total amount of \$2,800.00 for unpaid rent and loss of rent. Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due

in accordance with the tenancy agreement. Therefore, I find the tenant breached section 26 of the *Act* by failing to pay \$1,400.00 rent for August 2013. The tenant was still occupying the rental unit on September 1, 2013. As a result, I find that the tenancy was overholding for September 2013 and I accept the landlords' undisputed testimony that they could not re-rent the rental unit due to damage caused by the tenant to the rental unit. Based on the above, I find the landlords have met the burden of proof and have substantiated their monetary claim of **\$2,800.00** for \$1,400.00 in unpaid rent for August 2013 plus \$1,400.00 for loss of rent for September 2013.

As the landlords' application had merit, I grant the landlords the recovery of the **\$50.00** filing fee.

Monetary Order – I find that the landlords have established a total monetary claim of **\$2,850.00** comprised of \$1,400.00 in unpaid rent, \$1,400.00 for loss of rent, plus the \$50.00 filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlords continue to hold in the amount of \$700.00 which has accrued \$0.00 in interest to date. I **authorize** the landlords to retain the tenant's full security deposit of \$700.00 in partial satisfaction of the landlords' monetary claim, and I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenant in the amount of **\$2,150.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlords have established a total monetary claim of \$2,850.00 comprised of \$2,800.00 in unpaid rent and loss of rent, plus the \$50.00 filing fee. I authorize the landlords to retain the tenant's full security deposit of \$700.00 in partial satisfaction of the landlords' monetary claim and I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlords by the tenant in the amount of \$2,150.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision written in the Punjabi language.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 09, 2013

Residential Tenancy Branch

