



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of its monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent AW testified that he mailed the Notice of Hearing documents to each of the Tenants, by registered mail, on August 28, 2013. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence. I find that both Tenants were duly served with the Notice of Hearing documents.

The Landlord's agent AW testified that he mailed copies of the Landlord's documentary evidence to the Tenants by registered mail on November 18, 2013 and provided copies of the registered mail receipts and tracking numbers in evidence.

The Tenant testified that she sent copies of the Tenants' documentary evidence to the Landlord by registered mail on November 21, 2013. The Landlord acknowledged receipt of the Tenant's documents.

Issues to be Decided

- Is the Landlord entitled to a monetary award for unpaid rent for the months of January to July, 2013?
- May the Landlord deduct its monetary award from the security deposit?

Background and Evidence

This tenancy began on October 1, 2009. Monthly rent at the beginning of the tenancy was \$7,500.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$3,750.00 on October 1, 2009. In September, 2012, the Landlord gave

the Tenants a Notice of Rent Increase effective January 1, 2013, increasing the rent to \$7,670.00. The tenancy ended on July 31, 2013.

AW testified that the Tenants paid only \$5,500.00 a month commencing January, 2013. The Landlord seeks a monetary award in the amount of \$15,190.00, calculated as follows:

Monthly rent	\$7,670.00
Rent paid	<u>-\$5,500.00</u>
Shortfall	\$2,170.00
	<u> x7 months</u>
TOTAL	\$15,190.00

The Tenant stated that she attempted to negotiate a rent reduction with the Landlord because the rental property was overpriced. She stated that there were many repairs to be done and that she sent the Landlord evidence of other rental properties that were comparable, but cheaper. The Tenant testified that the Landlord refused to negotiate a reduction in rent, so the Tenants decided to withhold rent to get his attention. The Tenant agreed that they paid \$5,500.00 from January to July, 2013, which she submitted was fair. The Tenant stated that the Tenants did not file an Application for Dispute Resolution to get an Order for a rent reduction.

Analysis

Section 26 of the Act requires tenants to pay rent when it is due, whether or not the landlord complies with the Act, regulation or tenancy agreement, unless the tenants have a right under the Act to deduct all or a portion of the rent (for example, an Order of the Director). I find that the Tenants had no such right under the Act. The Tenants' remedy would have been to file an Application seeking a rent reduction.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the Director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenants did not comply with Section 26 of the Act. Further to the provisions of Section 67 of the Act, I find that the Landlord is entitled to a monetary award for unpaid rent in the amount of \$15,190.00.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of its monetary award.

The Landlord has been successful in its application and I find that it is entitled to recover the cost of the \$100.00 filing fee from the Tenants.

I hereby provide the Landlord with a Monetary Order, calculated as follows:

Unpaid rent	\$15,190.00
Recovery of the filing fee	<u>\$100.00</u>
Subtotal	\$15,290.00
Less security deposit	- \$3,750.00
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$11,540.00

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$11,540.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: December 10, 2013

Residential Tenancy Branch

