



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 30, 2013. Based on the evidence of the Landlord, 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.

At the start of the conference call the Landlord said the Tenant has moved out of the unit on November 1, 2013 with no notice. Therefore the Landlord said he no longer requires an Order of Possession. Further the Landlord said he is requested to amend the application to include the security deposit as partial payment of the rent arrears.

I withdraw the Landlords' request for an Order of Possession and I accept the Landlord's request to amend the application to include the security deposit as partial payment of the rent arrears.

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 retain the Tenant's security deposit?

Background and Evidence

This tenancy started on May 1, 2002 as a month to month tenancy. Rent is \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 on April 29, 2002.

The Landlord said that the Tenant did not pay \$800.00 of rent for September, 2013 and \$800.00 of unpaid rent for October, 2013 when it was due and as a result, on October 16, 2013 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2013 on the door of the Tenant's rental unit. The Landlord included a Proof

of Service document that is signed by a witness to support the service of the 10 Day Notice to End Tenancy. The Landlord said the Tenant has unpaid rent for November and December, 2013 as well in the amount of \$800.00 for each month.

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

Analysis

Section 26 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 Tenant did not give the Landlords proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$800.00 for September, 2013 and \$800.00 for rent for October, 2013 as well as the rent of \$800.00 for rent for November, 2013. Section 7 (2) of the Act says an applicant must mitigate any loss of damage and as such, I find the Landlord had sufficient time to rent the unit for December 1, 2013; therefore I dismiss the Landlord's claim for the December, 2013 rent of \$800.00.

As the Landlord has been partially 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 plus accrued interest in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,400.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,450.00
Less:	Security Deposit	\$325.00	
	Accrued Interest	\$ 11.51	
	Subtotal:		\$ 336.51
	Balance Owing		\$2,113.49

Conclusion

A Monetary Order in the amount of \$2,113.49 has been issued to the Landlords. 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*.

Dated: December 11, 2013

Residential Tenancy Branch