



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72. The tenant did not attend this hearing, although I waited until 1:44 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony and to make submissions.

The landlord testified that she served the tenant with an Application for Dispute Resolution package by registered mail on September 24, 2014. She testified that the registered mail package was sent to the rental unit while the tenant was still residing in the unit. The landlord testified submitted Canada Post receipts and tracking information for this mailing. She testified that she checked the online package tracking prior to the hearing and confirmed, in her testimony, that the tenant had received the dispute resolution package. Based on the evidence presented and pursuant to section 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's Application for Dispute Resolution package on September 29, 2014, 5 days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month to month tenancy began on March 1, 2007. The landlord testified that the tenant vacated the rental unit on September 30, 2014. The landlord testified that she

continues to hold the \$345.00 security deposit paid by the tenant on March 1, 2007. She supplied a copy of the residential tenancy agreement that showed a rental amount of \$690.00 as well as rent increase forms. She testified that the rental amount when the tenant vacated the rental unit was \$794.00 payable on the first of each month.

The landlord testified that the tenant did not pay rent in July, August or September 2015. The landlord testified that a 10 Day Notice to End Tenancy was issued to the tenant and, at the end of September the tenant vacated the rental unit. The landlord testified that the tenant made a \$100.00 payment towards rental arrears but that the rental amounts for July, August and September 2014 remain outstanding as follows;

Item	Amount
Unpaid Rent – July 2014 (794.00 rent – 100.00 payment)	\$694.00
Unpaid Rent – August 2014	794.00
Unpaid Rent – September 2014	794.00
Total Rental Arrears	\$2282.00

The landlord submitted a partially redacted copy of an email from the tenant dated September 10, 2014 providing the tenant's forwarding address and stating, "I am hoping that most if not all of my damage deposit can go towards rent I owe." The landlord also submitted for evidence bank deposit information and documented accounting of the tenant's unpaid rent.

Analysis

Section 67 of the *Act* establishes that if loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this case, the landlord/applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord has proven, with undisputed oral testimony and documentary evidence, that there were rental arrears at the end of this tenancy. The landlord has shown that the rental amount agreed upon with the tenant over the course of this tenancy. The

landlord has provided a copy of the tenancy agreement and accounting documentation that indicates the rental arrears for this tenancy. The landlord has also provided sworn, undisputed testimony with regard to the rental amount owed by the tenant. Based on all the undisputed evidence presented by the landlord, I find the landlord is entitled to a monetary order that includes \$2282.00 in unpaid rent.

The landlord testified that she continues to hold the tenant's security deposit. I note that the landlord applied within the time frame to retain all or a portion of the tenants' security deposit and therefore any rights to that security deposit have not been extinguished under the Act. Regardless, when an amount is owed by the tenant to the landlord, section 72(2)(b) of the Act allows for that amount to be deducted from a tenant's security deposit. Pursuant to section 72(2)(b) of the Act, I authorize the landlord to retain the tenant's security deposit plus any applicable interest to the date of this hearing in partial satisfaction of the monetary order. Interest in the amount of \$9.58 is applicable to this deposit.

As the landlord has been successful in this application, I find the landlord is entitled to recover the filing fee for this application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to obtain a monetary award for unpaid rent arising out of this tenancy, to retain the tenant's security deposit and to recover the filing fee:

Item	Amount
Unpaid Rent – July 2014 (794.00 rent – 100.00 payment)	\$694.00
Unpaid Rent – August 2014	794.00
Unpaid Rent – September 2014	794.00
Deduct Security Deposit held by Landlord (345.00 plus 9.58 interest = 354.58)	-354.58
Filing Fee for this Application	50.00
Total Rental Arrears	\$1977.42

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 1, 2015

Residential Tenancy Branch

