



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:46 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. 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 personally served the tenants both with the Application for Dispute Resolution package on January 9, 2015 before they vacated the residence. She testified that she also sent copies of the package to each tenant by mail on January 9, 2015 after her meeting with them. Based on the testimony of the landlord and pursuant to section 89 of the *Act*, I find the tenants duly served with the landlords' dispute resolution package on January 9, 2015.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to retain all or a portion of the tenants' security deposit towards any monetary award?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one year fixed term tenancy began on July 1, 2014. The rental amount of \$1850.00 was payable on the first of each month. The landlord provided testimony at this hearing that she continues to hold a \$925.00 security deposit and a \$400.00 pet damage deposit both paid by the tenants on June 25, 2014. The landlord testified that, after she served the tenants with a 10 Day Notice for unpaid rent on December 29, 2014, the tenants agreed to vacate the rental unit.

The tenants attended a condition inspection with the landlord and vacated the residence on January 9, 2015. The landlord testified that she was able to re-rent the unit for February 1, 2015 but not before that date. She testified that she took a variety of steps immediately with respect to online advertising and other efforts in the community to re-rent the unit sooner than February 1, 2015.

The landlord applied for a monetary award in her favour. Originally, she sought three months' unpaid rent, as well as a moving fee and costs for cleaning after the tenants vacated the residence. The landlord testified that she is aware the tenants are experiencing a difficult time with one of them suffering from cancer. She agreed to forgo any monetary amounts beyond the unpaid rent and the filing fee for this application, for a total amount sought of \$5650.00.

The landlord testified that the tenant did not pay any rent for the months of November 2014, December 2014 and January 2015. She testified that, while the tenants agreed to vacate the residence after receiving the 10 Day Notice and promising that they would be able to pay outstanding rent soon, the tenants have not paid any rental arrears to the date of this hearing.

The landlord testified that for the first several months of this tenancy, the tenants paid rent by an online transfer of funds to her. She testified that, with growing personal difficulties, they were unable to pay their rent from November 1, 2014. She testified that, at the end of the tenancy, on January 9, 2015, both tenants and the landlord conducted a walk through condition inspection of the residence. She testified that the tenants had verbally agreed at that time to forfeit their security and pet damage deposits towards unpaid rent.

Analysis

The landlord provided sworn, undisputed testimony that November 2014, December 2014 and January 2015 rent remain unpaid. She testified that the tenants had fallen on hard times and had been unable to meet rental obligations. She provided a copy of the original tenancy agreement as well as the 10 Day Notice to End Tenancy that she

issued for unpaid rent. She submitted that the tenants did not dispute the 10 Day Notice or that they owed rent: they were merely unable to pay.

I find that the landlord is entitled to receive an order for unpaid rent in 5550.00. I accept the uncontested evidence offered by the landlord as to the rental amount, the regular previous payments of rent by the tenants and the fact that they had failed to pay rent for the three months prior to the end of their tenancy. I am issuing the attached monetary order that includes the landlord's application for \$5550.00 in unpaid rent for November and December 2014 as well as January 2015.

The monetary order for the month of January is based on the landlord's sworn testimony that, despite efforts to find a tenant immediately, she was unable to rent the premises for that month. The monetary order with respect January 2015 rent is to reflect landlord's inability to re-rent after the 1st of the month, despite testimony that she made efforts to do so. I accept that the landlord minimized any loss by securing a tenant for February 1, 2015 and that the tenants are obliged to pay January 2015 rent given that they remained in the unit for a portion of that month.

The landlord testified that she continues to hold a security deposit of \$925.00 plus any interest from June 25, 2014 to the date of this decision for this tenancy. The landlord testified that she also continues to hold a pet damage deposit of \$400.00 plus any interest from June 25, 2014 to the date of this decision for this tenancy. I will allow the landlord to retain the security and pet damage deposits in partial satisfaction of the monetary award. There is no interest payable over this period of time.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for November 2014	\$1850.00
Rental Arrears for December 2014	1850.00
Rental Arrears/Loss for January 2015	1850.00
Less Security and Pet Damage Deposit (\$925.00 + \$400.00)	-1325.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$4325.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: June 04, 2015

Residential Tenancy Branch

