



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 by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; The landlord MS testified that the tenants were served in person on September 25, 2015.

The landlord MS and an agent for the landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep all or part of the security deposit?

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord's agent testified that this month to month tenancy started on March 01, 2015. This was an oral agreement for the tenants to rent the basement unit for a monthly rent of \$950.00. The tenants paid a security deposit of \$475.00 at the start of the tenancy.

The landlord's agent testified that the tenants paid the first month's rent but then for April and May the rent was paid late. All the rent was not paid on June 01, 2015 so the landlords issued a 10 Day Notice to End Tenancy for unpaid rent on June 11, 2015; although this was not served upon the tenants until July 30, 2015. A copy of this two page, 10 Day Notice has been provided in documentary evidence. The Notice indicates that the Notice is effective on June 01, 2015 and notified the tenants that they had five days to either pay the outstanding rent or file an application to dispute the notice.

The landlord MS testified that the tenants paid rent for June at the end of June although the landlord was unsure of the date it was paid. The landlord MS testified that the tenants paid their rent late in July, 2015 and have not paid any rent for August, September or October, 2015. The tenants abandoned the rental unit on October 26, 2015. The landlord testified that the tenants were served with another 10 Day Notice for the unpaid rent for August, 2015. A copy of this 10 Day Notice has not been provided in documentary evidence.

The landlord seeks a Monetary Order to recover unpaid rent for August, September and October, 2015 to an amount of \$2,850.00.

The landlords seek an Order permitting the landlords to keep the tenants' security deposit in partial satisfaction of their claim. The landlords also seek to recover their filing fee of \$50.00.

The landlord and the landlord's agent made mention that the tenants have not removed all their belongings and left the unit in a poor condition. The landlords have not applied for a Monetary Order for damage to the unit, site or property at this hearing.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords' limited documentary evidence and sworn testimony before me.

The landlord issued the 10 Day Notice on June 11, 2015 and agreed that the tenants paid rent for June at the end of June prior to the 10 Day Notice actually being served upon the tenants on July 30, 2015. Consequently, at the time the 10 Day Notice was served upon the tenants there was no rent outstanding for June. The landlord was also unsure when rent for July was paid but confirmed that it was paid. As the tenants have since vacated the rental unit I find the 10 Day Notice has no force or effect.

I must therefore consider the landlords' claim for unpaid rent for August, September and October, 2015. I refer the parties to s. 26 of the *Act* which states:

26. 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 landlord MS testified that the tenants failed to pay any rent for these three months. I am satisfied from the undisputed testimony before me that the tenants failed to pay rent for these months and I find in favor of the landlords' claim to recover unpaid rent to an amount of **\$2,850.00**.

I Order the landlord to keep the tenants' security deposit of **\$475.00** pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the unpaid rent.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for three months	\$2,850.00
Filing fee	\$50.00
Less security deposit	(-\$475.00)
Total amount due to the landlords	\$2,425.00

No further Monetary claim was made at the hearing.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,425.00**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: November 27, 2015

Residential Tenancy Branch

