Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOILY HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet 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 tenant for the cost of this application.

At the outset of the hearing the landlord withdrew his application for damage to the unit, site or property.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act;* served in person to the tenant by a process server on April 06, 2016. A sworn affidavit of service was provided in documentary evidence.

The landlord appeared, gave sworn testimony, was 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.

Issue(s) to be Decided

- Is he landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the tenant's security and pet deposit?

Background and Evidence

The landlord testified that this month to month tenancy started on September 08, 2015. Rent for this unit was $820.00 per month due on the first of each month. The tenant paid a security deposit of $410.00 and a pet deposit of $410.00 on September 08, 2015. The tenancy ended on January 04, 2016. The tenant did not provide a forwarding address and a process server served the tenant in person at his place of work.

The landlord testified that the tenant failed to pay rent for December, 2015 of $820.00. The landlord seeks to recover this amount from the tenant.

The landlord testified that as he did not have a forwarding address for the tenant he had to use a process server to serve the tenant in person with the hearing documents. The landlord seeks to recover the costs incurred for this service to take place of $83.60.

The landlord seeks an Order to be permitted to keep the security and pet deposits that the landlord holds in trust to a total amount of $820.00. The landlord seeks to have this amount offset against the unpaid rent for December, 2015.

The landlord seeks to recover the filing fee of $100.00 paid for this application.

Analysis

With regard to the landlord's claim for unpaid rent; 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 tenant has not attended this hearing to provide any evidence as to any right under the *Act* he may have to withhold rent for December, 2015. I am therefore satisfied that rent for December, 2016 remains unpaid of **$820.00** and consequently the landlord is entitled to recover that from the tenant.

With regard to the landlord's claim to recover the costs incurred for a process server to serve the tenant. There is no provision under the *Act* for costs to be recovered for serving another party. Consequently, this section of the landlord's application is dismissed without leave to reapply.

I Order the landlord to retain the security and pet deposits to a total amount of **$820.00** pursuant to s. 38(4)(b) of the *Act.* This amount will satisfy the landlord's claim for unpaid rent for December, 2015.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **$100.00** from the tenant pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord for this amount.

Conclusion

I HEREBY FIND in favor of the landlord's revised monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **$100.00** for the filing fee. The Order must be served on the respondent. Should the respondent 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.

The landlord is also entitled to retain the security and pet deposits of $820.00 to offset against the unpaid rent for December, 2015.

The landlord is at liberty to reapply for a Monetary Order for damage to the unit, site or property.

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: August 24, 2016

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Residential Tenancy Branch