Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, CNR

For the landlord – OPC, OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause and to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities. The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord's agent advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the portions of their application for an Order of Possession.

The hearing went ahead as scheduled the landlord's agent dialed into the conference call. The telephone line remained open while the phone system was monitored for 15 minutes and no one on behalf of the tenant called into the hearing during this time. Based on this I find that the tenant has failed to present the merits of their application and the tenant's application is dismissed without leave to reapply.

The landlord's agent 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 s. 89 of the

Residential Tenancy Act. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

Background and Evidence

The landlord has provided two copies of the tenancy agreement in documentary evidence. One was the original agreement showing rent was $1,000.00 per month and the amended agreement showing rent was reduced to $950.00 per month. Rent was due on the 1st of each month. The amended agreement shows the tenant paid a security deposit of $475.00 on May 18, 2016.

The landlord's agent testified that the tenant failed to pay rent for July of $950.00 and vacated the rental unit on July 31, 2016 as per the effective date of a One Month Notice that was served upon the tenant on June 20, 2016 for other issues relating to repeated late payment of rent and significantly interfering with or unreasonable disturbing another occupant or the landlord. The tenant was also served with a 10 Day Notice to End Tenancy for unpaid rent and utilities on July 02, 2016. This Notice had an effective date of July 10, 2016 and stated that the tenant owed rent that was due on July 01, 2016 of $950.00.The tenant did apply to dispute the 10 Day Notice but failed to attend the hearing.

The landlord's agent testified that the tenant left the rental unit in a poor condition due to smoking in the unit and the landlord has not been able to re-rent the unit for August, 2016. The landlord's agent agreed the landlord has not completed the work in the unit and has not yet started to advertise the unit for rent. The landlord seeks to recover a loss of rent for August of $950.00.

The landlord seeks an Order to be permitted to keep the security deposit of $475.00 in partial satisfaction of their claim and to recover the filing fee of $100.00.

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.*

Therefore from the evidence before me I find the tenant failed to pay rent for July, 2016 of **$950.00** and the landlord is therefore entitled to recover this amount from the tenant.

With regard to the landlords' claim for a loss of rent for August, 2016; I refer the parties to s. 7(2) of the *Act* which states:

> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

I am not satisfied from the evidence before me that the landlord has attempted to mitigate the loss of rent for August by advertising the unit for rent. I further find the landlords have provided insufficient evidence to show the condition of the unit at the end of the tenancy. Consequently, the landlords' claim for a loss of rent for August is dismissed without leave to reapply.

I Order the landlords to keep the tenant's security deposit of **$475.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset from the landlords' claim for unpaid rent for July, 2016.

As the landlords' claim has some merit the landlords are entitled to recover the filing fee of **$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent for July, 2016	$950.00
Filing fee	$100.00
Less security deposit	(-$475.00)
Total amount due to the landlord	$575.00

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **$575.00**. 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 tenant's application is dismissed without leave to reapply.

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 08, 2016

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Residential Tenancy Branch