



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JABS CONSTRUCTIONS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

LANDLORD: OPR, MNR, FF
TENANT: CNC, CNR, DRI, OLC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notices to End Tenancy and if successful; for the Landlord to comply with the Act, regulations and the tenancy agreement, to dispute a rent increase and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on July 20, 2016 in accordance with section 89 of the Act.

The hearing started at 11:00 a.m. as scheduled, however the Tenant did not dialled into the conference call. In the absence of any evidence from the Tenant to support the Tenant's application, the Tenant's application is dismissed without leave to reapply.

At the start of the conference call the Landlord said the Tenant moved out of the unit on August 18, 2016 so he is withdrawing his application for an Order of Possession as he has position of the rental unit. As well the Landlord requested to retain the Tenant's security deposit as the tenancy has now ended.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on March 1, 2016 as a fixed term tenancy with an expiry date of March 31, 2017. Rent is \$790.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$395.00 on February 20, 2016.

The Landlord said that the Tenant did not pay rent of \$790.00 for the month of July, 2016 and \$790.00 for the month of August, 2016. Further the Landlord said he is requesting a claim for \$25.00 to cover the cost of the July, 2016 rent cheque being returned NSF. The Landlord continued to say that they rented the unit for September 1, 2016 so they are not claiming for the September, 2016 rent.

The Landlord also said he is seeking to recover the \$100.00 filing fee for this proceeding. The Landlord said his total claim is for \$1,580.00 in unpaid rent, \$25.00 NSF costs and the \$100.00 filing fee for a total claim of \$1,705.00.

Analysis

Section 26 (1) of the Act says 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

I find that the Tenant has not paid the overdue rent and the Tenant does not have the right to withhold a part or all of the unpaid rent. Consequently, I accept the Landlord's testimony and evidence that there is unpaid rent in the amount of \$1,580.00 and a NSF charge for \$25.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$1,580.00, NSF charge of \$25.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,580.00
	NSF charges	\$ 25.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$1,705.00
Less:	Security Deposit	\$ 395.00
	Subtotal:	\$ 395.00
	Balance Owing	\$ 1,310.00

Conclusion

A Monetary Order in the amount of \$1,310.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is dismissed without leave to reapply and the Tenant is ordered to bear the cost of \$100.00 for the application which he has already paid.

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: September 06, 2016

Residential Tenancy Branch