



Dispute Resolution Services

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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 or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' 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 tenants for the cost of this application.

During the hearing the landlord withdrew his application for a Monetary Order for damage to the unit, site or property.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 and pet deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on July 01, 2014. The tenancy ended on October 14, 2015. Rent for this unit was \$760.00 per month due on the 1st of each month. The tenants paid a security deposit of \$380.00 and a pet deposit of \$380.00 which continues to be held in trust by the landlord.

The landlord testified that the tenants did not give written notice to end their tenancy and moved out in the middle of October, 2015. They had been having difficulties paying their rent and no rent was received for October. The landlord seeks to recover rent for October of \$760.00.

The landlord requested an Order to be permitted to retain the security and pet deposit to offset against the unpaid rent.

The landlord also seeks to recover the amount of \$50.00 for the cost of using a process server to locate the tenants as they did not provide a forwarding address and to serve the tenants using the process server.

The landlord also seeks to recover his \$100.00 filing fee from the tenants.

The tenants testified that they gave verbal notice to the landlord's building manager on September 05, 2015 and vacated the rental unit on October 15, 2015. The tenants testified that they agree that they did not pay rent for October but they thought they had

a deal with the landlord's building manager that the landlord could keep the security deposit to pay rent up to October 15, 2015.

The tenants testified that if they do owe rent for October then they agree now that the landlord may keep their security and pet deposit to cover the unpaid rent.

Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows: tenants are required to provide written notice to end a tenancy pursuant to s. 45 and 52 of the *Act*. The notice must be received by the landlord on or before the last day of the month when rent is due on the first day of the following month. The notice must then be effective not earlier than one month after the date the landlord receives the notice. Consequently, the verbal notice given by the tenants on September 05, 2015 was not sufficient to end the tenancy on October 15, 2015.

I am therefore satisfied that the landlord is entitled to recover unpaid rent for October, 2015 of \$760.00 as the earliest the tenants could have ended the tenancy had they given written notice in September would have been October 31, 2015.

I Order the landlord to keep the security and pet deposit to a total amount of \$760.00 pursuant to s. 38(4)(b) of the *Act*. This amount must then be offset against the rent owed by the tenants.

With regard to the landlord's claim to recover the cost for the process server; there is no provision under the *Act* for me to award costs to serve documents to a respondent. This section of the landlord's application is therefore dismissed.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of \$100.00 pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$100.00**. 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.

The parties may attempt to settle any further claims for damages or the landlord is at liberty to file a new application to pursue this claim.

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 28, 2016

Residential Tenancy Branch