



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDS, 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 or utilities; 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 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 landlords advised that the tenant is no longer residing in the rental unit, and therefore, the landlords withdraw the application for an Order of Possession. The landlord's also withdrew their application for a Monetary Order for damage to the unit, site or property and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement. The landlords are at liberty to reapply for these sections of their application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on November 02, 2016. Canada Post tracking numbers were provided by the landlords in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

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.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to retain the security and pet deposit?

Background and Evidence

The landlords testified that this tenancy started on October 10, 2013 for a fixed term of one year, thereafter reverting to a month to month tenancy. Rent for this unit was \$940.00 per month due on the 1st of each month. The tenant paid a security deposit of \$170.00 and a pet deposit of \$250.00 on October 10, 2013. A copy of the tenancy agreement has been provided in documentary evidence.

The landlord DS provided testimony on behalf of the landlords. DS testified that the tenant had failed to pay all the rent when it was due over a number of months. The rent arrears accumulated to the amount of \$4,930 as of November 01, 2016. The landlords had previously served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on August 30, 2016 and a hearing was held on October 07, 2016. The file number for that hearing is shown on the front page of this decision.

DS testified that at that hearing the landlords obtained an Order of Possession and were given leave to reapply for the monetary portion of their claim. The landlords never served the tenant with the Order of Possession as the tenant vacated the rental unit on or about November 12, 2016. The landlord entered into a new tenancy agreement with the tenant's roommates and they assumed the tenancy on November 01, 2016. Due to this the landlords no longer seek to recover rent from the tenant for November and seek

to recover rent due up to October 01, 2016 of \$3,990.00. DS referred to their documentary evidence showing the rent ledger detailing the rent paid and owed.

The landlords request an Order permitting them to keep the security deposit of \$170.00 and the pet deposit of \$250.00 in partial satisfaction of their claim.

Analysis

The tenant 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 tenant, I have carefully considered the landlords' undisputed evidence before me.

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.

I am satisfied from the undisputed evidence before me that the tenant has an outstanding amount of rent up to October 01, 2016 of **\$3,990.00**. Consequently, I find the landlords have established their claim to recover this amount from the tenant.

I Order the landlords to retain the security and pet deposit to a total amount of \$420.00. This amount will be offset against the landlords' monetary award pursuant to s. 38(4)(b) of the *Act*.

As the landlords' claim has merit the landlords may 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 pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent	\$3,990.00
Filing fee	\$100.00
Less security and pet deposits	(-\$420.00)
Total amount due to the landlords	\$3,670.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,670.00**. 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.

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: December 19, 2016

Residential Tenancy Branch