



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC,FF

Introduction

This matter dealt with an application by the landlord for a monetary order for unpaid rent. The landlord also seeks to retain all or part of the security deposit to satisfy all or part of any monetary order.

Both parties appeared at the hearing and were afforded the opportunity to present evidence. I have also reviewed any written documentation submitted by both parties prior to the hearing date.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, and if so it what amount?

Background and Evidence

This tenancy commenced in March 2007 at a monthly rent of \$1495.00 and a security deposit was paid in the amount of \$747.50. The tenants gave the landlord notice to end tenancy on August 6, 2008 to be effective September 30, 2008, and subsequently vacated the premises on September 17, 2008.

The landlord in his application states that the tenants did not pay the rent for the month of September and that he is also claiming rent for the month of October. The landlord at the hearing claims the monthly rent payable to be \$1570.00.

At the hearing, the tenant gave evidence that she had been informed by the landlord via a telephone message that the rental unit had been re-rented to a new tenant for October 1, 2008. The tenants also point out in their written submissions that the rent as claimed by the landlord includes an illegal rent increase that was imposed in March 2008. The tenant points out that the increase from \$1495.00 to \$1570.00 exceeds the 3.7% allowed under the *Residential Tenancy Act*, and that there was never any proper written notice of the increase given as required. The tenants have also never agreed to the rent increase in writing.

The tenants also gave evidence at the hearing that the landlord owed them an amount of \$104.33 as a result of a previous dispute resolution hearing and an order made on September 2, 2008.

Analysis

I find that the landlord is not entitled to claim for rent for the month of October 2008. The tenants gave the landlord proper notice on August 6, 2008 which was sufficient notice for the landlord to re-rent the rental unit.

I find that the landlord is entitled to rent for the month of September at the rate of \$1495.00 per month. The tenant's notice had an effective date of the end of September and as such they bear the cost of the rent, even if they elect to vacate earlier.

The tenants in their written submissions have requested that the amount owing of \$104.33 to them by the landlord from a previous order (#722671), which has not been paid, be deducted from any monetary order granted here. I find that pursuant to s. 72 of the Residential Tenancy Act, that I am able to offset the previous order and I will do so in my conclusion.

The tenants have also requested that any monetary order reflect the illegal rent increase of March 1, 2008 and that a deduction of \$75.00 be allowed for each month back to March 1, 2008. I quote from s. 43(5) of the *Residential Tenancy Act*:

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

I find that the tenants are entitled to recover the overpaid rent of \$75.00 per month commencing from March 1, 2008 to the end of the tenancy.

Conclusion

I find the landlord's claim is established as follows:

Unpaid Rent for September 2008	\$1495.00
Filing Fee	\$ 50.00
Total Claim Established	\$1545.00
Minus Previous Order #722671	-\$104.33
Minus Rent Increase (March 1 to August 30, 2008) 6 months @ \$75.00 per.	-\$450.00
Minus Security Deposit (\$747.50) Plus Interest (\$18.17)	-\$765.67
Total Payable To Landlord	\$225.00

I find that the landlord has established a claim in the amount of \$1545.00. I deduct the amounts as laid out in the table above and grant the landlord an order for the balance of \$225.00. The order may be filed with and enforced as an order of the Provincial Court of British Columbia.

Dated: October 9, 2008