

DECISION AND REASONS

Dispute Codes:

OP, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence and to make submissions during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, utilities, other costs and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy agreement requires the tenant to pay monthly subsidized rent of \$210.00. From July 2008 to January 2009 inclusive, the subsidized rent was \$226.00 per month.

On April 17, 2009 the landlord issued a 10 Day Notice for Unpaid Rent and Utilities of \$2,806.89 due on April 4, 2009, with an effective vacancy date of April 28, 2009. In response to this Notice the tenant moved out of the rental unit and the landlord testified that they obtained possession of the unit on May 19, 2009.

The landlord testified that the tenant owes rent as follows:

	Owed	Paid	Balance
January 2009	226	32	194
February	210	0	210
March	210	0	210
April	210	0	210

The ledger submitted by the landlord as evidence indicates that in December 2008 the tenant had an overpayment of \$74.00. After taking into account the \$32.00 payment made in January 2009, this results in \$120.00 rent owed for January resulting in a total unpaid rent owed to the end of April of \$750.00. The landlord has also claimed loss of rental revenue for 2 weeks of May plus natural gas costs of \$237.22.

The Landlord stated that they have not claimed the difference between the subsidized rent and the market rate rent actually owed by the tenant. The landlord stated that the tenant ceased to qualify for the level of subsidy she received due to inaccuracies on her income declaration completed in December 2008.

The Notice to End Tenancy issued by the landlords included costs for cleaning (\$500.00,) carpet cleaning (\$199.58,) vacancy loss for another unit that the tenant had lived in (\$841.00) and a natural gas bill of \$237.22. The landlord evidence indicates payment of a \$448.50 deposit by the tenant.

Analysis

The landlord no longer requires an Order of possession as the tenant has moved out of the rental unit.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$750.00 from January to April, 2009 inclusive, and that the landlord is entitled to compensation in that amount.

The landlord submitted a copy of a PNG gas bill for the period January 19 to March 17, 2009. In the absence of a copy of a tenancy agreement which details payment of utility bills or evidence that the tenant was provided with 30 days written notice of this charge, as required under section 46 of the Act, I dismiss without leave to reapply the claim for this gas bill.

The other costs included on the Notice to End Tenancy by the landlord do not constitute unpaid rent or utilities. The landlord has issued a Notice to End Tenancy, including costs that are not rent and utilities and as a result the tenant has vacated the rental unit. If presented with an application to cancel this Notice to End Tenancy, I would have found the Notice to be of no force or effect.

I find that the claim for all other costs included in the Notice to End Tenancy are dismissed without leave to reapply as the landlord has presented those costs as part of this application and failed to present any evidence that the tenant was made aware of these charges prior to the issuing of the Notice to End Tenancy. The tenant has vacated the rental unit based upon a Notice that included amounts that were beyond those permitted to form part of a notice to end tenancy.

The landlord's application for dispute resolution requests a monetary Order for unpaid rent and utilities only and does not present any information that the tenant would be presented with an application for costs related to loss of rent revenue or other charges made by the landlord. A respondent has the right to be notified of the case that is being made against them and, despite any rent that may not have been paid by the tenant; the inclusion of costs which have not been included in the application for dispute resolution fails to ensure a just process for the respondent.

I have accepted the landlord evidence that the tenant paid a deposit of \$448.50 and have calculated interest from the start date of this tenancy. I find that the landlord is holding a deposit, plus interest in trust of \$458.09.

I find that the landlord's application has only partial merit, and I find that the landlord is not entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

During the hearing the landlord testified that some of the tenant's belongings were left behind by the tenant and placed outside by the landlord. The landlord indicated that they are aware of the Residential Tenancy Branch Regulations which determine the required action related to goods apparently abandoned by a tenant.

Conclusion

I find that the landlord has established a monetary claim, in the amount of **\$750.00**, which is comprised of \$750.00 in unpaid rent from January 2009 to May 2009 inclusive.

The landlord has not applied to retain the deposit paid by the tenant, in partial satisfaction of the rent owed. However, section 72 of the Act allows a dispute resolution officer to order that money owed by a tenant to the landlord be deducted from any security deposit or pet damage deposit due to the tenant. Therefore, I find that the deposit plus interest of \$458.09 may be retained by the landlord in partial satisfaction of the claim and I grant the landlord a monetary Order for the balance owed of **\$291.91**.

In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I have dismissed without leave to reapply the landlord claim for the natural gas bill, cleaning fees, carpet cleaning and the vacancy loss for 5.

Dated June 02, 2009.

Dispute Resolution Officer