



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, FF,

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on or about January 29, 2011. The Tenant confirmed receipt of the Landlord's hearing package. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there damage or loss to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?

Background and Evidence

This tenancy started on November 1, 2009 as a fixed term tenancy with an expiry date of October 31, 2010 and then renewed as a month to month tenancy. Rent was \$1,150.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$575.00 on November 8, 2009.

The Landlord said that the Tenant did not pay \$550.00 of rent for the month of September, 2010, \$1,150.00 of unpaid rent for October, 2010 and \$1,150.00 of unpaid rent for January, 2011. The Landlord continued to say that the Tenant gave her verbal notice December 14, 2010 that he was moving out of the rental unit in January, 2011. The Landlord said she told the Tenant that he would be responsible for the January rent if she was unsuccessful in renting the unit to a new tenant in January, 2011, because the Tenant did not give her proper 1 month notice that he was ending the tenancy. The Landlord said she advertised the unit for rent as soon as she received the Tenant's

notice, but she was unable to rent the unit for January, 2011, so she said the Tenant is responsible for the rent.

As well the Landlord said she is applying for \$80.00 which are bank charges that her bank charged her for late payments on her mortgage. The Landlord said she included these fees as they were caused by the Tenant making his rent payments late.

The Tenant said that he and the Landlord had a good relationship and the tenancy had been flexible. He said he gave the Landlord notice he was moving out of the rental unit on December 14, 2010, but he was not sure if it was by text or verbal. He continued to say he move out on January 4, 2011 and returned the keys on January 8, 2011 during the move out condition inspection. The Tenant said he had hired a cleaning crew to clean the unit so it was done well.

The Tenant said that he made a deposit to the Landlord's bank on about January 17, 2011 of \$550.00 to cover the unpaid September, 2010 rent and he paid the October, 2010 rent by depositing \$1,200.00 to the Landlord's bank on October 8, 2010. The Landlord confirmed the \$1,200.00 October deposit on her bank statement. As well the Landlord indicated there was a bank to bank transfer in her account of \$550.00 on February 3, 2011. The Tenant said he could be mistaken on the date and he may have made the deposit in late January or early February, 2011.

The Tenant said he had not paid the January, 2011 rent as he thought he was not responsible for it as he had given notice that he was moving out on December 14, 2010 and he did not live in the unit for all of January, 2011.

Analysis

Section 45 says a tenant may end a tenancy by giving the landlord notice that they are ending the tenancy not earlier than one month after the date the landlord receives the notice and the notice is based on the day the rent is due.

From the testimony and evidence of the Landlord and the Tenant it indicates that the notice to end the tenancy was given by the Tenant on December 14, 2010 for January 1, 2011 and the Tenant moved out on January 8, 2011 when the condition inspection was done and the Tenant returned the keys to the unit. Pursuant to section 45 a notice given on December 14, 2010 has an effective vacancy date of January 31, 2011. The Tenant did not give the proper 1month notice to end tenancy and the tenant had control of the unit until January 8, 2011, consequently I find the Tenant is responsible for the January, 2011 rent of \$1,150.00.

Section 26 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 and a landlord must provide a tenant with a receipt when rent is paid in cash.

In this tenancy both the Landlord and the Tenant said no receipts for rent payments were issued, therefore confirmation of rent payments must rely on the testimony and the evidence. I accept the Tenant's testimony that he paid the September rent of \$550.00 in late January or early February, 2011 as the Landlord confirmed her bank statements show a branch to branch transfer of \$550.00 on February 3, 2011. This was the method of rent payment the Tenant used throughout the tenancy. As well I accept the Tenant's testimony that he made the October, 2010 rent payment by depositing \$1,200.00 in a branch to branch transfer in the Landlord's bank on October 8, 2010. The Landlord confirmed this deposit was on her bank records. Therefore I find the Tenant has made the September rent payment of \$550.00 and the October, 2010 rent payment of \$1,150.00 plus an over payment of \$50.00 to the Landlord so the Landlord's claim for these amounts are dismissed without leave to reapply.

The Landlord has applied for late mortgage payment fees of \$80.00 that her bank charged her for late payments, which she said resulted from the Tenant's late rent payment. The Residential Tenancy Regulations under part 1 do not make a provision for this type of fee to be claimed in an application, consequently the Landlord's claim for \$80.00 for bank fees are dismissed without leave to reapply.

As the Landlords have been partially successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

	January Rent arrears:	\$1,150.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,200.00
Less:	Rent over payment from October, 2010	\$ 50.00
	Subtotal:	\$ 50.00
	Balance Owing	\$ 1,150.00



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Conclusion

A Monetary Order in the amount of \$1,150.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch