



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on March 8, 2011. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Has the Landlord had a loss or damage and if so how much?
5. Is the Landlord entitled to compensation for loss or damage and if so how much?
6. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

At the start of the hearing the Landlord said they had possession of the unit and therefore they were withdrawing the request for an Order of Possession.

This tenancy started on December 1, 2009 as a one year fixed term tenancy and then renewed as a month to month tenancy. Rent was \$900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 on December 1, 2009. The tenancy ended on February 4, 2011 when the Tenant moved out to comply with the Landlords' Notice to End Tenancy.

The Landlord said that the Tenant did not pay \$400.00 of rent for September, 2010, \$100.00 of rent for December, 2011 and \$900.00 of rent for January, 2011, when it was

due and as a result, on January 24, 2011, the Landlords' agent personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 24, 2011. The Landlord said the effective vacancy date on the Notice was February 3, 2011 and the total amount of unpaid rent was \$1,400.00.

In addition the Landlord said they are applying for loss of rental income for February, 2011 in the amount of \$900.00 and March, 2011 in the amount of \$900.00. The Landlord said they were not able to rent the unit until May 1, 2011.

The Landlord also requested to recover from the Tenant the \$50.00 filing fee for this proceeding.

The Tenant said she received a 10 Day Notice to End Tenancy for Unpaid rent earlier in January, 2011, but it was late dated, so she requested the Landlord issue a new Notice with a current date on it. The Tenant said the Landlord issued the new Notice on January 24, 2011 and she is not disputing that she has unpaid rent. The Tenant said she has \$400.00 of unpaid rent from September, 2010, she believed the rent was reduced for to \$800.00 for December and January, but she said there is nothing in writing and it may have been a misunderstanding between the Landlord and herself. Therefore she said she understands that the Landlord is seeking \$100.00 of rent for December and \$900.00 for January, 2011. The Tenant continued to say that she is not responsible for loss rental income for February and March, 2011 as the Landlord knew in January she was moving out and she complied with the Landlords' Notice to End Tenancy by moving out on February 4, 2011.

The Tenant continued to say when she moved out the unit was left in good condition and the Landlord said they were not going to rent it out immediately because there were repairs to be done to the unit before they could rent it out again.

The Landlord said they agreed that the unit was left in good shape by the Tenant and they did do repairs to the unit prior to renting it out again. The Landlord said the repairs were completed in the first part of April, 2011 and they rented the unit out for May 1, 2011.

Analysis

Section 26 (1) 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.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution and does not have the right to withhold part or all of the unpaid rent. Consequently, I find pursuant to s. 67 of the Act that the Landlord is entitled to a Monetary Order. The Landlord is entitled to recover unpaid rent for September, 2010, in the amount of \$400.00, \$100.00 of unpaid rent for December, 2010 and \$900.00 of

unpaid rent for January, 2011, for a total of unpaid rent of \$1,400.00. I accept the Tenant's testimony that the Landlord was not going to rent the unit out immediately after the Tenant moved out because the Landlord was planning to do some repairs to the unit prior to renting the unit again. The Landlord agreed this was in fact what happened; therefore I find the Landlord did not lose any rental income as the unit was being repaired at the end of the tenancy. I dismiss the Landlord's claim for loss of rental income for February, 2011 of \$900.00 and for March, 2011 of \$900.00 as the rental unit was not available for rent. The Landlord said he told his agent the unit was available for rent in the first week of April, 2011 and the unit was rented out on May 1, 2011.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,400.00	
	Recover filing fee	<u>\$ 50.00</u>	
	Subtotal:		\$ 1,450.00
Less:	Security Deposit	<u>\$ 450.00</u>	
	Subtotal:		\$ 450.00
	Balance Owing		\$ 1,000.00

Conclusion

A Monetary Order in the amount of \$1,000.00 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