



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, damage to the unit, site or property, 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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 11, 2011. 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 all parties present.

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. Are there damages to the unit or property and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on August 18, 2008 as a 1 year fixed term tenancy and then renewed with an expiry date of August 31, 2010. Rent was \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$525.00 on August 6, 2008. The Tenancy ended on August 31, 2010, although the Tenant moved out of the rental unit on August 6, 2010.

The Landlord said that the Tenant did not pay \$1,050.00 of rent for August, 2010 when it was due and as a result, on August 13, 2010 the Landlord's agent posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated August 13, 2010 on the Tenant's door.

The Landlord continued to say she is requesting compensation for damages to the rental unit and property as follows:

Yard clean up (24 hours @ \$20/hr)	\$ 480.00
Lawn repairs	\$1,031.43
Fence take down and disposal (10 hours @ 20/hr)	\$ 200.00
House cleaning and repairs	
20 hours cleaning @ \$20.00/hr	\$ 400.00
19 hours plastering and painting @ \$20.00/hr	\$ 380.00
Supplies for cleaning and painting	<u>\$ 37.97</u>
Sub Total	<u>\$2,529.40</u>
Unpaid August, 2010 rent	<u>\$1,050.00</u>
Total Claim	<u>\$3,579.40</u>

The Landlord continued to say that the Landlord's agent did a move in and move out condition inspection report on the Property Managers form. The form was not signed by the Tenant and it was not completed. The Tenant said she did not sign the form and she did not receive a copy of any of the condition inspection reports done throughout the tenancy. As well the Tenant said the Property Manager did not indicate any problems to her with the condition of the unit throughout the tenancy and the Tenant said the Property Manager said the condition of the unit was fine on the move out walk through. The Tenant did say that the Property Manager asked her about keeping her security deposit as partial payment of the August, 2010 rent, but she disagreed. The Tenant continued to say that was the last communication she had with the Property Manager.

The Landlord continued to say that the yard was over grown with weeds at the end of the tenancy. The Landlord submitted evidence from a Realtor who said that a couple of hundred dollars would clean up the yard and then the Landlord was told by a Landscaping company that the lawn would have to be replaced. The Tenant said the yard had weeds in it when she moved in and that the weeds grow after she moved out so it looked worse than how she left it.

The Landlords said that the Tenant put up a fence for her dog and she was to take the fence down at the end of the tenancy. The Tenant agreed that she put the fence up, but she did not believe she was responsible to take the fence down at the end of the tenancy. The Tenant said the fence was 5 posts and square gauge wire attached to the posts and the garage. The Landlord said it took 2 men working 5 hours to take the fence down and dispose of it at a cost of \$20.00 per hour each totalling \$200.00.

The Landlord continued to say the house was left in an unclean state and there was damage to the wall, floors and window cases. The Landlord provided a Witness M.D. that said she came out from Calgary to help her daughter clean the house. The Witness said the house was very dirty and there was pet damage throughout the house. The landlord said they cleaned the house for 20 hours at \$20.00 per hour and then plaster and painted the interior of the house which took 19 hours at \$20.00 per hour.

The Tenant said the LL had pets in the house prior to the tenant moving in and only the two bedrooms were freshly painted when she moved in. The Tenant said the pet damage could have be caused partially by the Landlord's pets prior to her move in.

The Tenant said in closing that the Property Manger signed off on the rental unit and told the Tenant the condition of the unit was fine, but her security deposit should be use to pay the unpaid August rent. The Tenant said she disagreed with the Property Manager because she could not afford to give up her security deposit. As well the Tenant said she had no idea that the owners would be making a claim against her for the condition of the rental unit. The Tenant said she was aware from an email from the Landlord that the house was going to be ungraded and sold after her tenancy, so she believed there were no issues with how she left the rental unit.

The Landlord closed her remarks by saying the August rent was not paid and the Tenancy Agreement was for a fixed term ending August 31, 2010 so the rent is unpaid and due. As well the Landlord said the house and yard were in a state that was beyond normal wear and tear and the Tenant was responsible to leave the rental unit clean and undamaged. The Landlord said even though the Property Manager did not complete the condition inspection reports correctly her photographic evidence should substantiate her claims.

Analysis

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.

The Tenant did not have the right under the Act to withhold part or all of the rent for August, 2010, therefore I find in favour of the Landlord for the unpaid rent of \$1,050.00 for August, 2010.

Section 37 of the Act says that when a Tenant is leaving the rental unit at the end of a tenancy unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends and when the tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord or the Landlord's agent did not complete as required by the regulations, a move in or move out condition inspection report. The reports done were not signed by both the Landlord and the Tenant and the Tenant was not given a copy of the report in the time required by the regulations. As a result the Landlord has not established a base line for the condition of the rental unit and property prior to the Tenant moving in. Consequently it is unclear what and how much damage was done to the unit and property by the Tenant if any. The parties agreed the lawn had weeds in it when the Tenant moved in, the Landlord had pets in the unit prior to the Tenant moving in and only the two bedrooms were freshly painted at the start of the tenancy. The Landlord did provide photographs that she said were taken prior to the tenancy. These photographs are not date stamped therefore it is unclear when all the photographs were taken, I find the Landlord has not established proof of the condition of the property at the start of the tenancy, consequently the Landlord's claim for cleaning and repairs of the house and yard are dismissed without leave to reapply.

It was agreed by both the Tenant and the Landlord the fence was constructed for the Tenant's use and I accept the Landlord testimony that the fence was to be taken down by the tenant at the end of the tenancy. I award the Landlord \$200.00 for 10 hours @ \$20.00 to take down and dispose of the fence.

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. I order the Landlords 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:	\$ 1,050.00
	Fence disposal	\$ 200.00
	Recover filing fee	<u>\$ 50.00</u>
	Subtotal:	<u>\$ 1,300.00</u>
Less:	Security Deposit	\$ 525.00
	Interest on Security Deposit	\$ 3.18
	Subtotal:	<u>\$ 528.18</u>
	Balance Owing	<u>\$ 771.82</u>

Conclusion

A Monetary Order in the amount of \$771.82 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