



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, SS, O

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit, to serve documents in a different way than required by the Act, to recover the filing fee for this proceeding and for other considerations.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on September 3, 2011. The Landlord said the hearing package was returned the first time she registered mailed it, so she mailed it a second time to a known address of the Tenant. The Landlord said the second address is one that the Tenant lives at. 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 in the Tenant's absences.

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 or losses to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for the damages or losses and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?
6. Is the Landlord entitled to serve documents in an alternative way?
7. What other considerations are there?

Background and Evidence

This tenancy started on November 1, 2010 as a fixed term tenancy with an expiry date of October 31, 2011. Rent was \$1,900.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 on October 18, 2010. The Landlord said in April, 2011 the Tenant said he was going to move out, but the Landlord told the Tenant the tenancy was fixed term to October 31, 2011; therefore he was responsible for the rent until October 31, 2011. The Landlord said the Tenant was aggressive towards her and she did not hear from him again until he moved out of the rental unit on August 1, 2011.

The Landlord said the Tenant has unpaid rent for August, 2011 in the amount of \$1,900.00, unpaid rent for September, 2011 in the amount of \$1,900.00 and unpaid rent for October, 2011 in the amount of \$1,900.00 as she was unable to rent the unit until November 1, 2011. The Landlord said the Tenant also has an unpaid water bill in the amount of \$63.12 and the Landlord provided receipts. The Landlord said she provided advertisement receipts in the amount of \$337.09 to prove that she tried to rent the unit as soon as she could after cleaning the unit. The Landlord is also claiming \$400.00 for 20 to 30 hours of her labour to clean the rental unit. The Landlord said the unit was left very dirty and she had to haul a considerable amount of garbage to the dump. The Landlord provided photographic evidence to show the unclean condition of the unit and the amount of garbage left in the unit. The Landlord continued to say she is requesting \$75.00 for costs to haul the garbage and \$283.58 for professional carpet cleaning of the rental unit. As well the Landlord said the Tenant did not cut the grass so she hired a lawn cutting service to cut the grass on two occasions. The Landlord submitted receipts for lawn work of \$123.40. Photographs were supplied by the Landlord to show the condition of the lawn after the Tenant moved out. The Landlord said she is also claiming repairs to a dryer in the amount of \$106.35 and a service call by a plumber to unclog a drain. The Landlord said the Tenant made the appointment with the plumber and then the Tenant did not show up to let the plumber in, consequently the plumber charged the Landlord with a service call in the amount of \$142.80. The Landlord provided receipts for both of these claims.

Analysis

Section 45 (2) says a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Tenant moved out of the rental unit on August 1, 2011 in violation of the fixed term tenancy agreement, which states the tenancy ended on October 31, 2011; therefore the Tenant is responsible for the unpaid rent for August, September and October, 2011 in the amount of \$5,700.00. Further I award the Landlord for the unpaid utility bill of \$63.12.

Section 37 (2) of the Act says when a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) 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.

I accept the Landlord's evidence and testimony that the rental unit and yard were left in an unclean and uncared for state and consequently I award the Landlord compensation for yard work of \$123.40, repair costs to the drain and dryer of \$249.15, the Landlord's labour to clean the unit of \$400.00, carpet cleaning of \$283.58 and garbage removal of \$75.00.

In addition the Landlord has show pursuant to section 7 (2) of the Act that she tried to rent the unit as soon as possible to minimize her loss. Consequently I award the Landlord the costs of advertising to rent the unit in the amount of \$337.09.

As the Landlord has successful in this matter, she is ordered to recover the \$100.00 cost of the filing fee for this proceeding from the Tenant. I order the Landlord pursuant to s. 38 and 72 to keep the Tenant's security deposit as partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

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	Rent arrears: (3 months)	\$ 5,700.00	
	Unpaid Utilities	\$ 63.12	
	Yard work	\$ 123.40	
	Repair costs	\$ 249.15	
	Landlord's labour to clean the unit	\$ 400.00	
	Carpet cleaning	\$ 283.58	
	Garbage removal	\$ 75.00	
	Costs to rent the unit	\$ 337.09	
	Filing fee	\$ 100.00	
	Subtotal:		\$7,331.34
Less:	Security Deposit	\$ 1000.00	
	Subtotal:		\$ 1,000.00
	Balance Owing		\$ 6,331.34

Conclusion

I order the Landlord to retain the Tenant's security deposit in the amount of \$1000.00 as partial settlement of the unpaid rent.

A Monetary Order in the amount of \$6,331.34 has been issued to the Landlord. A copy of the Order 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*.

Dated: November 21, 2011.

Dispute Resolution Officer