



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant MNDC, MNSD, RPP, FF
	Landlord MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit, for the Landlord to return personal property and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on January 6, 2012, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by personal delivery on January 5, 2012 in accordance with section 89 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlords and if so how much?
4. Is the Landlord entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?
6. Is the Landlord entitled to unpaid rent and if so how much?
7. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Has the Landlord take the Tenant's personal property and if so is the Tenant entitled to the return of that personal property?
4. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on September 1, 2011 as a month to month tenancy. Rent was \$1,050.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$525.00 on August 28, 2011. The tenancy ended December 31, 2011 as a result of 10 Day Notice to end Tenancy dated December 9, 2011 for unpaid rent of \$1,050.00.

The Landlord said the Tenant moved out of the rental unit on December 31, 2011, but the Tenant removed his belonging on January 1, 2012. The Landlord said the Tenant did not pay the rent for December, 2011 and therefore the Landlord issued a Notice to End Tenancy dated December 9, 2011. The Landlord continued to say the Tenant did not have all of his personal property out of the unit until January 1, 2012, consequently the Landlord said she could not rent the unit out for January, 2012. The Landlord said she is claiming rent for December, 2011 of \$1,050.00 and rent for January, 2012 of \$1,050.00 as well as the Tenants security deposit of \$525.00 for cleaning and removing

garbage from the rental unit. The Landlord said her total claim is for \$2,625.00 plus the \$50.00 filing fee for this proceeding.

The Tenant said the Landlord changed the locks on December 27, 2011 so he could not get in to the rental unit to get his personal property out of the unit. As well the Tenant said the Landlord stole a crystal vase worth \$60.00, coins worth \$50.00, an amplifier worth \$300.00, a portable fireplace worth \$600.00 and his sunglasses worth \$100.00. The Tenant continued to say the Landlord has not returned his security deposit of \$525.00 and he is applying for it, but it was not checked off on his application. The Tenant said his total claim is for \$1,635.00 and the filing fee for this proceeding of \$50.00.

The Tenant said the Landlord was holding his TV and had told him she would give it back when he paid his rent. The Tenant said he spoke with the Police and they advised the Landlord to return the TV. The Tenant said he has the TV and it is no longer part of the application. The Tenant continued to say that he had no evidence other than his word that these items were stolen and that he thought the values he had put on them are correct.

In the Tenants closing remarks he said he has no way to prove the Landlord stole his property, but he said it was true. As well the Tenant agreed he has not paid the December, 2011 rent of \$1,050.00.

The Landlord said in her closing remarks that she did not steal the Tenant's person property and the Tenant owes rent to her for December, 2011 and January, 2012 for a total amount of \$2,100.00.

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 does not have a right to withhold the December, 2011 rent of \$1,050.00. Consequently, I find the Tenant is responsible for the rent for the month of December in the amount of \$1,050.00.

Further I find that since the Landlord changed the locks so the Tenant could not remove his personal property until January 1, 2012, I find the Tenant could not be fully moved

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out of the unit by December 31, 2011 and therefore is not responsible for the January, 2012 rent of \$1,050.00 and the Landlord's claim for January, 2012 rent is dismissed without leave to reapply.

The Tenant's application is for the return of personal property or a monetary claim for the value of that property. The Tenant said he has not provided any corroborating evidence to prove a loss actually happened and he has not proven the value of the items that he listed as stolen. The Tenant is solely relying on his testimony to substantiate his claim. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently I find the Tenant has not established grounds to proof his claim and I dismiss the Tenant's application with leave to reapply.

As the Landlord has 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 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:

	Loss rent:	\$ 1,050.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,100.00
Less:	Security Deposit	\$ 525.00
	Subtotal:	\$ 575.00
	Balance Owing	\$ 575.00

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$50.00 cost of the filing fee for his application that he has already paid.

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Conclusion

A Monetary Order in the amount of \$575.00 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.

The Tenant's application is dismissed with leave to reapply.

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*.

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