



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord's Agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on November 23, 2011 and then again in person on January 2, 2012. Based on the evidence of the Landlord's Agent, 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 absence.

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 and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?
6. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 15, 2011 as a fixed term tenancy with an expiry date of August 31, 2012. Rent was \$888.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$444.00 on September 15, 2011. The Landlord said the Tenant moved out of the rental unit on either November 29 or November 30, 2011 as a result of a 10 Day Notice to End Tenancy dated November 2, 2011.

The Landlord said that the Tenant did not pay rent of \$186.00 for September, 2011, \$368.00 of unpaid rent for October, 2011 and \$888.00 of unpaid rent for November, 2011. The Landlord said she rented the unit for December, 2011 so she is withdrawing her claim for rent for December, 2011. In addition to unpaid rent the Landlord's Agent said she is claiming for painting costs of \$356.84, because the Tenant smoked in the unit and it is a no smoking rental unit, \$38.08 in advertising costs to get a new tenant, a

property management fee of \$222.00 for establishing the new tenancy which started December 1, 2011 and 3 late rent fee charges of \$25.00 each in the amount of \$75.00. The Landlord's Agent said her total claim is \$2,183.92, which includes the \$50.00 filing fee for this proceeding.

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 the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the unpaid rent for September, 2011 in of \$186.00, unpaid rent for October, 2011 of \$368.00 and unpaid rent for November, 2011 in the amount of \$888.00. Further I also award the Landlord's claim for the three late rent payments for the months of September, October and November, 2011 in the amount of \$75.00.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord's agent proved the loss existed and she verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord's Agent's testimony that these damages and losses were caused by the Tenant and the costs were reasonable amounts to make repairs to the unit because of smoking in the unit and to find a new tenant. As well the Landlord's Agent acted quickly to put a new tenant in the unit to minimize the Tenant's responsibilities for the rent on a fixed term tenancy. Consequently, I find the Landlord's Agent has established grounds to be awarded the costs for advertising of \$38.08, the property management fee of \$222.00 and the costs to paint the unit of \$356.84. I award the Landlord a total of \$616.92 for damages and losses.

As the Landlord has been successful in this matter, the Landlord 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 payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,442.00
	Late rent fees	\$ 75.00
	Property management fee	\$ 222.00
	Advertising	\$ 38.08
	Painting	\$ 356.84
	Recover filing fee	\$ 50.00
	Subtotal:	\$2,183.92
Less:	Security Deposit	\$ 444.00
	Subtotal:	\$ 444.00
	Balance Owing	\$ 1,739.92

Conclusion

A Monetary Order in the amount of \$1,739.92 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*.

Residential Tenancy Branch