



Dispute Resolution Services

Page: 1

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 said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 2, 2011. Based on the evidence of the Landlord, 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 all parties in represented.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Are the Landlords entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and are the Landlords entitled to compensation?
6. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 1, 2010 as a fixed term tenancy with an expiry date of June 1, 2011 and then renewed on a month to month basis. Rent was \$1,650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$825.00 on June 1, 2010. The Landlord said the Tenants moved out of the rental unit on November 30, 2011 without proper notice to the Landlords. As a result the Landlords said they were unable to rent the unit for December, 2011. The unit was rented starting January 1, 2012.

The Landlord said that the Tenant did not pay half the rent in the amount of \$825.00 for November, 2011. As well the Landlord said the Tenant left the rental unit in an unclean state and there was damage to the garage door and to a window sill. The Landlord submitted photographs to show the unit was not clean and to indicate the damage to the

garage door and window sill. The Landlord said they are claiming \$200.00 for cleaning the unit, \$800.00 to replace the garage door and \$150.00 to repair the damaged window sill. The Landlord continued to say the cleaning has been done, but the garage door has not been replaced and the window sill has not been repaired. The Landlord said they sent in an estimate for the cost of the garage door and window, but there are no receipts for the work because the work has not been done.

The Tenant said she had a verbal agreement with the Landlord to pay only half the November, 2011 rent in the amount of \$825.00 and that she would be out of the unit by November 15, 2011. The Tenant said she was moved out of the unit by November 12, 2011 and tried on a number of occasions to have the Landlord do the move out condition inspection with her. The Tenant said the Landlord did the move out condition inspection with her on December 1, 2011. The Tenant said that the Landlord said he was not returning her security deposit because the Landlord said she owed half a month's rent and there was damage to the unit. The Tenant said she cleaned the unit except for behind the stove and she believed she left the unit cleaner than when she moved in. The Tenant said she has no knowledge of the damage to the garage door and said it may have happened after she moved out.

The Landlord said the other Landlord A.B. accepted half the rent of \$825.00 on November 1, 2011, but did not agree to forfeit the other half of the rent. The Landlord said they are entitled to the full month's rent because the Tenant did not give the Landlord proper written notice that she was moving out of the unit a full month prior to moving out.

The Tenant's Advocate said the damages that the Landlords are claiming appear to be high and the Landlords have not provided receipts to prove the lost actually exists.

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.

Section 45 of the Act says a Tenant may end a period tenancy. The Tenant's notice must be a written notice at least one month prior to the date that rent is payable.

In this situation the Tenant did not give the Landlords proper written notice to end the tenancy and 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 November, 2011 in the amount of \$825.00.

As well for a monetary claim 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. If the applicant does not establish all these tests then the claim will not be successful.

As the Landlord said there are no receipts for the cleaning and damages claimed and that the door replacement and the window sill repairs have not been done; I find the Landlord has not established grounds to be awarded their claim of \$200.00 for cleaning the unit, \$800.00 for the garage door replacement and \$150.00 for window sill repairs. I dismiss the Landlords' claim for damages to the rental unit with leave to reapply.

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 Landlords 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:	\$ 825.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 875.00
Less:	Security Deposit	\$ 825.00
	Subtotal:	\$ 825.00
	Balance Owing	\$ 50.00

Conclusion

A Monetary Order in the amount of \$50.00 has been issued to the Landlords. 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