



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, 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 and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by register mail on February 9, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' 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. Is there a loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for loss or damage and if so how much?

Background and Evidence

This tenancy started on May 1, 2011 as a fixed term tenancy with an expiry date of April 30, 2012. Rent was \$775.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$387.50 on April 18, 2011 and a pet deposit \$387.50 is in the tenancy agreement but was not paid as the pets did not stay in the rental unit. The Landlord said the Tenants moved out of the rental unit on August 2, 2011 as a result of a 10 Days Notice to End Tenancy for Unpaid Rent dated July 22, 2011.

The Landlord said that the Tenant did not pay \$775.00 of rent for July, 2011. As well the Landlord said the Tenants' rent cheque for August, 2011 was returned as refused from the bank. The Landlord continued to say they advertised the unit on 3 web sites to try to get a new tenant as soon as possible and had 12 showing of the unit, but the Landlord said they were unable to rent the unit until September 14, 2011. As a result the Landlord is claiming unpaid rent for July, 2011 of \$775.00, and loss of rental income for August, 2011 of \$775.00 and \$362.00 for 14 days of September, 2011. The Landlord said they are in their rights as this was a fixed term tenancy which obligates the Tenants until the end of the tenancy or April 30, 2012 or when the unit is rented to a new tenant. As well the Landlord said she is claiming liquidated damages of \$400.00

which is written into the tenancy agreement for costs incurred by the Landlord to rent the unit to new tenants if the tenancy ends early. The Landlord said these costs included her time to advertise and to show the unit as well as the costs of the advertisements.

The Landlord also said they are requesting to recover the filing fee of \$50.00 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.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

As the tenancy ended due to unpaid rent by the Tenants the Landlord is entitled to compensation for unpaid rent and lost rental income due to the breach of the tenancy agreement by the Tenants. I find the Landlord has established grounds to be awarded unpaid rent for July, 2011 of \$775.00 and loss of rental income of \$775.00 for August, 2011 and for 14 days of September ($\$775.00 \times 14/30 \text{ days} = \362.00) of \$362.00. As well the Landlord has established grounds to support her claim that the liquidated damages are for legitimate costs to rent the unit to new tenants. These costs include her time and expenses for advertising and showing the unit because of an early end to the previous tenancy. I find for the Landlord and grant their claim of \$2,312.00 for unpaid rent, lost rental income and liquidated.

As the Landlords have been successful in this matter, she is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 775.00
Lost rental income	\$1,137.00
Liquidated damages	\$ 400.00
Recover filing fee	\$ 50.00
Subtotal:	\$ 2,362.00
Balance Owing	\$ 2,362.00

Conclusion

A Monetary Order in the amount of \$2,362.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: 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