



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an order of Possession, a Monetary Order for unpaid rent and utilities, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlords' agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 24, 2012. Based on the evidence of the Landlords' agent, 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 both parties in attendance.

The Tenant said she moved out of the rental unit on April 20, 2012 and the Landlords' agent said because they have possession of the unit the Landlords are withdrawing the application for an Order of Possession. The Landlords' agent also said the Landlord is applying for damage or loss the Tenant caused them.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on January 1, 2011 as a fixed term tenancy with an expiry date of January 1, 2012 and then renewed on a month to month basis. Rent was \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$375.00 on December 21, 2010.

The Landlords' agent said that the Tenant did not pay \$750.00 of rent for April, 2012 so the Landlords agent issued a 10 Day Notice to End Tenancy dated April 12, 2012. As well the Landlord said they were not able to rent the unit until June, 2012 so the Landlords are requesting loss of rental income for the month of May, 2012 in the amount of \$750.00.

The Landlords' agent continued to say the Tenant has unpaid utilities of \$296.38 for February and March and an estimated \$300.00 for April and May, 2012. As well the Landlords' agent said the Landlords had to rekey the unit at a cost of \$134.93 because the Tenant did not return the keys to the unit. The Landlords' agent said the keys are normally returned during the move out condition inspection which they had scheduled for April 26, 2012, but the Tenant did not attend the inspection.

Further the Landlords' agent said they have applied for a tenant replacement fee of \$420.00, but on questioning the Landlords' agent the agent said this fee is not in the tenancy agreement. In addition the Landlords' agent said they also have applied for cleaning costs of \$250.00, but as the restoration company cleaned the unit after the work was done the Landlords are withdrawing this part of the application.

The Tenant said there was a water leak in her rental unit on March 10, 2012, which the Landlords attended to that same day. The Tenant continued to say that over the course of the next 2 weeks when she was told the repairs to the unit would be completed, she was then told the repairs were more extensive and more time was needed to complete the repairs. The Landlords' agent said these repairs included redoing the walls and floors of the affected areas of the unit and the bathroom required new floors and the wall had to be repaired and retiled. The Landlords' agent said the repairs including the replacement of the toilet were completed on May 4, 2012. As well the Landlords' agent said there was no rush to complete the repairs because the Tenant was not living in the unit.

The Tenant continued to say the unit was uninhabitable so she moved out of the unit on March 22, 2012 to a Hotel that her insurance company paid for. The Tenant said that she did not pay the April, 2012 rent and when she received the 10 Day Notice to End Tenancy dated April 12, 2012 with an effective vacancy date of April 26, 2012 she thought the tenancy was over. The Tenant said she moved out of the rental unit on April 20, 2012 without notice to the Landlords. The Tenant said she cleaned the unit the best she could, but it was a construction zone so it was difficult to clean properly. The Tenant said the Landlords agent did not contact her during the time she was in the hotel. As a result the Tenant said she does not believe she is responsible for the May, 2012 rent.

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 did not give the Landlords proper notice to end the tenancy and the Tenant did not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$750.00 for April, 2012 and the utilities of \$296.38 for the months of February and March, 2012.

Section 45 of the Act says a tenant may end a periodic tenancy not earlier than one month prior to the date that rent is normally payable or with the written agreement of the Landlord.

Section 7(2) of the Act says a landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must** do whatever is reasonable to minimize the damage or loss.

It is correct that a tenant must give 1 month's notice prior to moving out or the tenant may be held responsible for a month's rent following the move out. In this situation the Tenant said she moved out because the unit was not repaired in the time she was told it would be and the repair work made the unit uninhabitable; therefore when she received the Notice to end tenancy she believed the tenancy was over. The Tenant should have given the Landlord one month's notice of moving out of the rental unit, but it is understandable why she did not. As well the Landlord should have tried to minimize their loss of rental income by first having the repairs to the unit completed earlier for the Tenant or ready for a new rental in May, 2012. The Landlord knew the Tenancy was ending April 26, 2012 as the Landlords' agent had a move out inspection scheduled for that date. The unit was not ready to rent in May, 2012 because the Landlords' agent said there was no rush to complete the work because the Tenant was not living in the unit. Consequently, I accept the Tenant's testimony and I find the Landlords did not try to minimize their loss as stated in section 7(2) of the Act; therefore I dismiss the Landlords' claim for loss of rental for May, 2012 in the amount of \$750.00 and the loss of utilities estimated at \$300.00 for April and May, 2012.

Further because the Tenant did not attend the move out inspection meeting; I find that the Landlords have established grounds to receive the cost of rekeying the locks in the amount of \$134.93.

With respect to the Landlords application for a tenant replacement fee there is no reference to such a fee in the tenancy agreement therefore I dismiss the Landlords request for a tenant replacement fee of \$420.00 without 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 partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 750.00
	Utilities arrears	\$ 296.38
	Rekeying locks	\$ 134.93
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,231.31
Less:	Security Deposit	\$ 375.00
	Subtotal:	\$ 375.00
	Balance Owing	\$ 856.31

Conclusion

A Monetary Order in the amount of \$856.31 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



Residential Tenancy Branch

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Now that you have your decision...

You might want more information about what to do next.

If you do, visit the RTB website at www.rto.gov.bc.ca for information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession
- How and when to enforce a monetary order:
Fact Sheet RTB-108: Enforcing a Monetary Order
- How and when to have a decision or order clarified or corrected:
Fact Sheet RTB-111: Clarification or Correction of Orders and Decisions
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: Review of a Residential Tenancy Branch Decision **(Please Note: Legislated deadlines apply)**

If you would like to personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602
- Elsewhere in BC: 1-800-665-8779

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca