



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant MNDC, O
Landlord MNR, MND, MNDC, MNSD, OPR,FF

Introduction

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

The Landlord filed seeking an order of possession and a monetary order for unpaid rent, for damages to the unit site or property, 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 Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on July 1, 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 June 15, 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.

The Tenant amended his application from a monetary claim of \$62,159.94 to a monetary claim of \$25,000.00 on August 7, 2012. The Tenant said he posted the amended claim on the Landlord's door, but the Tenant could not remember when he served the documents. The Landlord said he did not receive the Tenant's amended application.

The Landlord said he obtained possession of the unit April 20, 2012 so the request for an Order of Possession in this application is not required.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is there damage to the unit site or property and is the Landlord entitled to compensation if there is damage?
4. Is there loss or damage under the Act, regulations or tenancy agreement and is the Landlord entitled to compensation if there is loss or damage?
5. 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?

Background and Evidence

The Tenant moved into the unit on February 18, 2012, although the tenancy agreement was to begin on March 1, 2012 as a month to month tenancy. The Landlord said there was no tenancy agreement and the Tenant said there was a written tenancy agreement. No tenancy agreement was submitted into evidence. Rent was \$1,700.00 per month payable on the 1st day of each month. The Tenant paid a security deposit in two payments with the full deposit being paid of \$850.00 in February, 2012.

The Landlord said he received an Order of Possession from a previous dispute resolution hearing held in April, 2012. The Landlord continued to say this application is for his monetary claims against the Tenant. The Landlord said the Tenant has unpaid rent for February, 2012 of \$1,700.00, March, 2012 of \$1,700.00 and unpaid rent for April, 2012 in the amount of \$1,700.00. As well the Landlord said the Tenant has unpaid utility charges, although the Landlord did not submit any invoices or bills to support his claims. As well the Landlord is claiming \$100.00 for door and lock repairs, \$9,800.00 in floor repairs and \$10,000.00 in carpet replacements. The Landlord said his total claim is \$25,000.00.

The Landlord continued to say he has repaired the doors, but did not submit any receipts and he has not done the work to the floors so his claims for floor repairs and carpet replacement are only estimates or what he thinks it will cost to repair the floors and replace the carpets.

The Landlord continued to say that the Tenant's belongings were in a rented trailer which was hauled away by a tow truck company on the instructions of the trailer rental company, because the trailer was reported as stolen. The Landlord said he did an inspection of the unit on April 20, 2012 with the Police and he said there were no items of any value left in the rental unit.

The Tenant said he moved into the rental unit on February 18, 2012 as the Landlord had given him the keys and permission to move into the unit. The Tenant said he understood the tenancy started on March 1, 2012 but the Landlord gave him permission to move in early. The Landlord said he gave the Tenant permission to move some of his belongings into the unit prior to March 1, 2012, but he did not give permission for the Tenant to move in early. The Tenant continued to say that he did make the March, 2012 rent payment and he did not pay the April, 2012 rent. The Landlord said the Tenant's March, 2012 rent cheque bounced and the Tenant said the cheque cleared his bank account. Neither parties submitted any evidence that the rent was paid or was not paid.

The Tenant continued to say that he is claiming \$25,000.00 in damages from the Landlord as he has lost all his possessions. The Tenant said some were in the rental unit and some were in the rented trailer that was hauled away. The Tenant said he has made inquiries about the rental trailer, but he has not been able to find it or who has possession of it. The Tenant said he believes the Landlord hauled it away from the rental unit. The Tenant submitted a list of his personal property that is gone and he estimated the value of each item. The Tenant did not have tenant insurance to corroborate his claims nor did he present or submit any evidence to support his claims. The Tenant said he amended his claim from \$62,159.94 to \$25,000.00 as that is the monetary limit allowed under the Residential Tenancy Act.

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.

As both parties agreed the tenancy start on March 1, 2012; I find that the Tenant is responsible for rent for March and April, 2012. In the absence of any evidence to the contrary I accept the Landlord's testimony that the rent is unpaid for March and April, 2012 in the amount of \$3,400.00. Also, I find that because the Landlord agreed to the early move in date with no agreement about any rent due for February, 2012, the Tenant is not responsible for the February, 2012 rent.

The Tenant did not have the right under the Act to withhold part or all of the rent for March, 2012 and April, 2012, therefore I find in favour of the Landlord for the unpaid rent of \$1,700.00 for each month of March and April, 2012, for a total unpaid rent of \$3,400.00.

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.

As the Landlord did not provide any verification of his claim for unpaid utilities, I dismiss the claim for unpaid utilities on the grounds that the amount was not established or verified.

As well the Landlord said he has not done the repairs to the floors and he has not replaced the carpets, therefore the Landlord cannot prove or verify his claims for damages as the claims are only estimates of what the Landlord believes the repairs will cost. Consequently I find the Landlord has not met the criteria to be successful in a monetary claim and I dismiss the Landlord claim for floor repairs of \$9,800.00 and carpet replacement for \$10,000.00 with leave to reapply.

The Tenant has claimed of \$25,000.00 for loss or damage of his personal property. As mentioned a monetary claim for loss or damage can only be successful if the applicant proves the loss or damage 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.

As well 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. The Tenant has not provided any evidence or corroborating testimony that would verify his loss or damage beyond a list of his personal property and estimated values that he has attached to the items. I find that the Tenant has not established grounds to be successful in his claim and consequently I dismiss the Tenant's application with leave to reapply.

As the Landlord has been partially successful in this matter, he 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:

	Rent arrears: (\$1,700.00 X 2)	\$3,400.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$3,450.00
Less	Security deposit	\$ 850.00	
	Subtotal:		\$ 850.00
	Balance owing		\$2,600.00

Conclusion

A Monetary Order in the amount of \$2,600.00 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*.

Residential Tenancy Branch