



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement, for compensation for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenants' security and pet deposits in partial payment of those amounts.

The Landlord's Agent said the Landlord served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 10, 2012. Based on the evidence of the Landlord's Agent, 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.

At the start of the conference call the Landlord's Agent said the Tenants moved out of the rental unit on July 3, 2012 so the Landlord does not need an Order of Possession. The Landlord's Agent said the Landlord is withdrawing that part of the application.

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 the loss or damage and if so how much?
5. Is there damage to the unit, site or property and if so how much?
6. Is the Landlord entitled to compensation for the damage and if so how much?
7. Is the Landlord entitled to retain the Tenant's security and pet deposits as partial payment of rent arrears?

Background and Evidence

This tenancy started on March 20, 2012 as a fixed term tenancy with an expiry date of March 30, 2013. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$600.00 and a pet deposit of \$100.00 on March 20, 2012. The Landlord's Agent said the Tenants moved out of the unit on July 3, 2012.

The Landlord's Agent said that the Tenant did not pay \$450.00 of rent for May 2012 and \$1,200.00 of unpaid rent for June, 2012 and as a result, on June 13, 2012 the Landlord personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated June 13, 2012 to the Tenants. The Landlord's Agent said the Tenants have unpaid rent for July, 2012 in the amount of \$1,200.00 as well.

The Landlord's Agent said the Landlord did not complete a move in or move out condition inspection report, but he did submit photographs to show the damage the Tenants did. The Landlord's Agent said the Landlord's total damage claim is \$1,213.63. The Landlord's claim includes \$102.68 for damage to the doors, \$170.00 for carpet cleaning, \$24.95 for garbage removal, \$560.00 for carpet replacement and \$356.00 for a window replacement. The Landlord's Agent said the Landlord included receipts for each of the expenses claimed in the application.

The Landlord's Agent said the Tenants left the house in very poor condition with many loads of garbage left in the unit, pet damage to the carpets and doors and a broken window that had to be replaced.

The Landlord's Agent also requested to recover 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 did not have the right under the Act to withhold part or all of the rent for May, 2012 and June, 2012; therefore I find in favour of the Landlord for the unpaid rent of \$450.00 for May, 2012, \$1,200.00 for June 2012. I further find that the Landlord is entitled to recover a loss of rental income for July, 2012 in the amount of \$1,200.00 as the Tenants lived in the unit until July 3, 2012 and the Tenants left the rental unit in poor condition and the unit could not be rented until it was cleaned and repaired.

Consequently I award the Landlord \$2,850.00 in unpaid rent representing unpaid rent for \$450.00 for May, \$1,200.00 for June and \$1,200.00 for July, 2012.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord's Agent said they are unable to establish the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant, I find that the Landlord has not established proof that the Tenant damaged the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

Section 37 of the Act says that at the end of a tenancy a tenant must leave the unit reasonably clean. From the photographs and affirmed testimony of the Landlord's Agent I find the Tenants did leave the unit in poor condition and as a result I award the Landlord cleaning costs of \$170.00 for carpet cleaning and \$24.95 for garbage removal for a total cleaning claim of \$194.95.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants 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 Tenants' security and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$2,850.00	
	Cleaning claim	\$ 194.95	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$3,094.95
Less:	Security Deposit	\$ 600.00	
	Pet Deposit	\$ 100.00	
	Subtotal:		\$ 700.00
	Balance Owing		\$ 2,394.95



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Conclusion

A Monetary Order in the amount of \$2,394.95 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.

The Landlord's damage claim is dismissed without 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*.

Dispute Resolution Officer