



Dispute Resolution Services

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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 he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 28, 2012. Based on the evidence of the Landlord's Agent, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

During the start of the conference call the Landlord was told his evidence package was received by the Residential Tenancy Branch on September 4, 2012. The Landlord's evidence package is date stamped September 4, 2012. Consequently the evidence package is considered as late evidence and is not admissible to the hearing. The Landlord's original application dated June 26, 2012 and the Landlord's testimony are accepted as evidence to support 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. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Is there loss or damage and if so how much?
6. Is the Landlord entitled to compensation for loss or damage and if so how much?
7. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on December 30, 2011 as a month to month tenancy. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on January 15, 2012 and a pet deposit of \$200.00 on December 30, 2011. The Landlord said that the pet deposit was returned to the Tenant when the pet was removed from the rental unit. The Landlord continue to say the tenancy ended June 13, 2012 as a result of a 10 Day Notice to End Tenancy for Unpaid

rent issued to the Tenant in the first part of June, 2012. The Landlord said the 10 Day Notice to End Tenancy has an effective vacancy date of June 15, 2012.

The Landlord said that the Tenant did not pay rent of \$200.00 for May, 2012 and the Tenant has unpaid rent of \$1,200.00 for June, 2012 and \$1,200.00 for July, 2012. As well the Landlord said they made repairs to the unit after the Tenant moved out. The Landlord is claiming \$20.00 for damage to the door moulding, \$75.00 to damage to the ceiling fan, \$10.00 for garage removal and \$560.00 for yard clean up. The Landlord said the yard clean up is calculated at 16 hours of work at \$35.00/hour = \$560.00 in total. The Landlord continued to say that he sent photographs of the damages in the evidence package. The Landlord said his total claim for unpaid rent and damages is \$3,265.00.

The Landlord also requested to recover the filing fee of \$50.00 from the Tenant.

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.

I accept the Landlord's testimony that the Tenant has unpaid rent of \$200.00 for May, 2012 and \$1,200.00 for June, 2012 as the Tenant lived in the unit until June 13, 2012. As for the Landlord's claim for rent of \$1,200.00 for July, 2012 I find the Landlord had enough time between June 13, 2012 and July 1, 2012 to rent the unit to new tenants as the Tenant moved out on June 13, 2012. Section 7(2) of the Act says a party must do whatever is reasonable to minimize a loss or damage. The Landlord provided no evidence that indicated he did whatever was possible to minimize his lost rent for July, 2012; therefore I dismiss the Landlord's claim for unpaid rent of \$1,200.00 for July, 2012.

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 there is no evidence to corroborate the Landlords' damage claims, I find the Landlord has not established grounds to be successful on any of the damages that the Landlord has claimed. Consequently, I dismiss the damage claims of \$20.00 for damage to the door moulding, of \$75.00 for damage to the fan, for \$10.00 for garbage removal and for \$560.00 for yard clean up.

As the Landlords have been partially successful in this matter, the Landlord is 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 payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,400.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,450.00
Less:	Security Deposit	\$ 600.00
	Subtotal:	\$ 600.00
	Balance Owing	\$ 850.00

Conclusion

A Monetary Order in the amount of \$850.00 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.

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