



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order 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 Landlords' agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on November 23, 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 all parties in attendance.

Issues(s) to be Decided

1. Are there loss or damages and if so, how much?
2. Are the Landlords entitled to compensation for loss or damages and if so how much?
3. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 1, 2012 as a fixed term tenancy with an expiry date of February 28, 2013. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$475.00 on August 28, 2012. The Landlords' agent said the Tenant gave notice on October 9, 2012, that she was moving out of the rental unit on October 15, 2012. The Tenant said she moved out of the rental unit on October 15, 2012.

Both the Landlords' agent and the Tenant said the rent for October, 2012 was paid. The Landlords' agent said they are applying for loss of rental income for the November, 2012, in the amount of \$950.00, because the unit has not been rented to a new tenant. The Landlords' agent said they are requesting the November, 2012 rent of \$950.00 as

lost rental income as the Tenant broke the fixed term tenancy agreement before the expiry dated of February 28, 2013.

As well the Landlords' agent said they are applying for unpaid utilities of \$52.29 and for carpet cleaning of \$112.00. The Landlord continued to say the carpet cleaning has not been done to date and she did not included the utility bill in the evidence package.

The Tenant said she paid the utility bill on November 27, 2012.

The Tenant continued to say that she had to move out of the rental unit because her daughter has health issues that were being aggravated by the mold in the rental unit. The Tenant said she had contacted the Landlords' agent and the maintenance workers about the mold issue and other issues in the rental unit, but the issues were not resolved so the Tenant said she had to move out for health reasons.

The Tenant provided a Witness V.R. who said the Landlords did not respond to the Tenant's requests to make repairs to the unit and to correct the mold issue; therefore the Tenant and her daughter had to move out of the rental unit. The Tenant did not provide any other evidence to establish there was a mold issue in the unit.

The Landlords' agent said in closing that she understands her claims for carpet cleaning and the utility bill do not have supporting evidence to prove a valid claim. The Landlords' agent said she is claiming lost rental income for November, 2012 and she has included documentation and has testified to show that she has advertised the rental unit, she has showed the rental unit to try to rent it, but she has been unsuccessful to date. The Landlords' agent also requested to retain the Tenant's security deposit as partial payment of the lost rental income.

The Tenant said in closing that she had to move out of the rental unit for health reasons.

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 and with the agreement of the Landlord.

The Tenant did not give the Landlords proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the loss of rental income of \$950.00 for the month of November, 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.

The Landlords agent has not provided any evidence to prove the loss for the carpet cleaning and the utility bill therefore; I dismiss both of these claims 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 lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$ 950.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,000.00
Less:	Security Deposit	\$ 475.00
	Subtotal:	\$ 475.00
	Balance Owing	\$ 525.00

Conclusion

A Monetary Order in the amount of \$525.00 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.TEXT

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*.

Dated: February 25, 2013

Residential Tenancy Branch

