



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MASON INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent and loss of rental income, 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 she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on January 4, 2013. Based on the evidence of the Landlord, 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 with all parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and/or loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and/or loss of rental income and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on November 1, 2009 as a fixed term tenancy with an expiry date of October 30, 2010 and continued on a month to month basis after that. Rent is \$1,189.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$542.50 on October 31, 2009. The Landlord said the Tenant was moved out of the rental unit by a Bailiff on January 10, 2013 as a result of an Order of Possession dated December 13, 2012 with an effective vacancy date of 2 days after service of the Order on the Tenant. The Landlord said the Order of Possession was serviced on the Tenant on January 4, 2013.

The Landlord said they had a previous hearing in which a mutual agreement to end the tenancy was agreed to, but the Tenant did not comply with the terms of the mutual agreement to end the tenancy so the Landlord had to hire a Bailiff to evict the Tenant and remove the Tenant's belongings. As a result of the eviction the Landlord is requesting the following monetary compensation:

Unpaid rent and loss of rental income for January, 2013	\$1,189.00
NSF fee	\$ 25.00
Supreme Court fee	\$ 120.00
Bailiff Service Enforcement costs	\$ 2,788.11
Filing fee	\$ 50.00
Total	\$ 4,172.11

The Landlord said she has included paid receipts for the court fee of \$120.00 and paid the Bailiff service fee for \$2,788.11.

The Tenant's daughter said she did not think that they should be responsible for the rent for the full month of January, 2013 as they only lived in the unit until January 10, 2013. The Tenant's daughter said the Landlord could have showed the rental unit while they were in it and the Landlord did not so the Tenant's daughter said they are not responsible for the loss of rental income to the Landlord for January, 2013.

The Tenant's daughter continued to say that they were not asked by the Bailiff if they wanted their belongings moved to a storage facility; therefore they should not be responsible for the costs of packing, moving and storing their belongings after the eviction. The Landlord said she told the Bailiff and movers that they should ask the Tenant if she would agree to the costs associated with packing, moving and storing the Tenant's belongings. The Landlord said that because the Tenant's belongings were moved and stored instead of being put on the street the Landlord believes the Bailiff and movers had the Tenant's permission to pack, move and store her belongings.

The Tenant's daughter said there was a loss of communications between the Tenant and the Landlord which resulted in this poor situation. The Tenant's daughter said they do not believe they should be responsible for the costs the Landlord is claiming even though the Tenant did not comply with the Mutual Agreement to End the Tenancy agreed to at the Hearing on December 13, 2012.

The Landlord said she is only claiming for costs that she has incurred because of the Tenant's actions. The Landlord said her total claim is \$4,172.11.

Analysis

Policy Guideline 3 says this guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.

Section 44 of the *Residential Tenancy Act* and section 37 of the *Manufactured Home Park Tenancy Act* set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

In this situation the Tenant was overholding until January 10, 2013, therefore the Tenant is responsible for the rent from January 1, 2013 to January 10, 2013. As well I accept the Landlord's testimony that it is unreasonable to have advertised, shown and re-rented the unit during January, 2013. Consequently I find the Landlord has established ground to be awarded lost rent from January 10 to January 31, 2013. I award the Landlord the amount of \$1,189.00 which represents the rent for January, 2013.

Further the NSF charge of \$25.00 is included in the tenancy agreement; therefore I award the \$25.00 NSF fee to the Landlord to recover the costs of the NSF costs.

For a monetary claim for damage or 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 Landlord proved the Bailiff and Court cost losses existed and she verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord testimony that these damages and losses were caused by the Tenant and the costs were standard Bailiff and Court fees. Consequently, I find the Landlord has established grounds to be awarded the costs for the Court fees of \$120.00 and for the Bailiff fees in the amount of \$2,788.11.

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

	Rent arrears and loss of income	\$ 1,189.00
	NSF fees	\$ 25.00
	Court costs	\$ 120.00
	Bailiff fees	\$ 2,788.11
	Recover filing fee	\$ 50.00
	Subtotal:	\$4,172.11
Less:	Security Deposit	\$ 542.50
	Subtotal:	\$ 542.50
	Balance Owing	\$ 3,629.61

Conclusion

A Monetary Order in the amount of \$3,629.61 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*.

Dated: March 26, 2013

Residential Tenancy Branch

