



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent or loss of rental income, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement 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 registered mail on February 15, 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 representatives for both the Landlords and the Tenant.

Issues(s) to be Decided

1. Are there rent arrears or loss rental income and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or loss rental income 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. Are there other losses or damages and is the Landlord entitled to compensation?

Background and Evidence

This tenancy started on October 1, 2012, as a fixed term tenancy with an expiry date of September 30, 2013. Rent was \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$525.00 on October 1, 2012. The Landlord said the Tenant moved out of the rental unit on December 30, 2012 as a result of a 10 Day Notice for Unpaid rent dated December 5, 2012. The Landlord said in a previous dispute hearing (801056) the Landlord was ordered to keep the Tenant’s security deposit as partial payment of unpaid rent for December, 2012.

The Landlord said she was unable to rent the unit for January, 2013 and when the rental unit was sold in January, 2013 the new owner charged the Landlord \$1,000.00 as the rental unit did not have a tenant in it as the fixed term tenancy agreement state. The Landlord provided information that shows she advertised the unit on the internet starting on December 12, 2012. The Landlord said the Tenant signed a fixed term tenancy agreement with an expiry date of September 30, 2013, therefore the Tenant is responsible for the January, 2013 rent which the Landlord is claiming \$1,000.00 for.

The Landlord continued to say that the Tenant did not pay her share of the utilities which was 70% of the bills from October, 2012 to January, 2013. The Landlord submitted the utility bills in the amount of \$229.15.

As well the Landlord said the unit was left in an unclean state and there was garbage and furniture left in the unit by the Tenant which the Landlord had to deal with. The Landlord said it cost her \$800.00 (plus HST) in cleaning and hauling charges and \$110.00 (plus HST) in dump fees to bring the unit back to a rentable condition. In addition the Landlord said there were four doors damaged in the unit and the Landlord submitted receipts for the purchase of four doors and the labour to install the doors. The Landlord said the doors and installation cost her \$608.00 (plus HST). The Landlord said the total bill for the cleanup, hauling and repairs to the unit was \$1,691.20.

The Landlord said her total claim is \$2,970.35, which includes the \$50.00 filing fee for this proceeding.

The Tenant's agent wanted to clarify that the Tenant signed the tenancy agreement, but it was the Tenant's daughter who actually occupied the rental unit.

The Tenant's agent said the Tenant did sign a fixed term tenancy agreement, but because of the condition of the unit and poor relations with the Landlord the Tenant's daughter felt she had to move out of the unit and therefore does not believe she is responsible for the January, 2013 rent of \$1,000.00.

The Tenant's agent said there was no move in or move out condition inspection reports completed by the Landlord and the damage to the doors that the Landlord is claiming was there at the start of the tenancy. The Tenant's agent said the doors need painting and there was damage to the hinges at the time the Tenant moved in. The Tenant's agent continued to say that the pictures of the doors in the Landlord's evidence were actually at the start of the tenancy not at the end of the tenancy. As a result the Tenant's agent said the Tenant is not responsible for the damage to the doors the Landlord is claiming.

The Tenant's agent said the Tenant agrees to the Utility charges of \$229.15 and the dump fees of \$110.00, but they believe the amount of \$800.00 in labour for cleaning and hauling is an inflated amount. The Tenant's agent offered the Landlord \$100.00 as full settlement of the cleaning and hauling costs. The Landlord said she hired a company to clean and haul the garbage and furniture away and she was charge \$800.00 for the labour to do that. The Landlord said the bill is paid in full.

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 or with the agreement of the landlord.

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 the Landlord suffered for January, 2013 of \$1,000.00. I find the Landlord has established grounds to be awarded the lost rental income for January, 2013 in the amount of \$1,000.00.

As well I award the utilities of \$229.15 and the \$110.00 dump charges to the Landlord as both parties agree the Tenant has not paid her share of the utilities and she said did not clean the unit when she move out. The Tenant said she agrees to these charges.

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 Landlord has proven she suffered a loss for the labour to cleaning and hauling garbage and furniture to the dump of \$800.00 plus HST. This is the amount the Landlord pay a third party to do the clean up. The Tenant dispute the amount as being inflated, but the Landlord is only trying to recover the costs that she incurred therefore: I find the Landlord has established grounds for the costs to clean and haul garbage and furniture to the dump in the amount of \$800.00 plus HST.

Further as the Landlord did not completed a move in condition inspection report at the start of the tenancy the Landlord has not established a base line for the condition of the unit at the start of the tenancy and therefore cannot prove the amount of damage or if there was any damage to the doors in the unit. Consequently I dismiss the Landlord's claim for \$608.00 plus HST for the replacement of the doors in the rental unit.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Lost rental income	\$ 1,000.00
Unpaid utilities	\$ 229.15
Dump fees	\$ 110.00
Cleaning fees	\$ 800.00
HST paid on dump & cleaning fees	\$ 109.20
Recover filing fee	\$ 50.00
Subtotal:	\$ 2,298.35
Balance Owing	\$ 2,298.35

Conclusion

A Monetary Order in the amount of \$2,298.35 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: April 17, 2013

Residential Tenancy Branch