



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, 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 registered mail on March 8, 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 in the Tenant's absence.

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 the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on January 1, 2012 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 December 29, 2011. The Landlord said the Tenant moved out of the rental unit during the 1st or 2nd week of February, 2013.

The Landlord said that the Tenant did not pay \$4,480.00 of rent over a number of months so the Landlord said she issued a 10 Day Notice to End Tenancy dated January 14, 2013. The Landlord said the Tenant paid \$2,000.00 of rent on January 25, 2013, but did not pay the balance of the unpaid rent of \$2,840.00. As well the Landlord said the Tenant did not pay any rent for February, 2013.

The Landlord requested that the application be amended to include the February, 2013 rent of \$1,200.00. The Landlord said this would make the total claimed unpaid rent of \$4,040.00.

The Landlord also requested to recover the \$50.00 filing fee for his application.

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 periodic or month to month tenancy not earlier than the one month prior to the date when the notice is issued and not earlier than the date in the month the rent is normally paid.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent of \$2,840.00 indicated on the 10 Day Notice to End Tenancy dated January 25, 2013. As well pursuant to section 7.2 the Landlord is responsible to mitigate or minimize any loss or damage in a claim. Therefore I find the Landlord had time to look for another tenant for the unit in February, 2013 so I award the Landlord ½ of February, 2013 rent in the amount of \$600.00.

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

	Rent arrears:	\$ 2,840.00	
	Lost rental income for February	\$ 600.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$3,490.00
Less:	Security Deposit	\$ 600.00	
	Subtotal:		\$ 600.00
	Balance Owing		\$ 2,890.00

Conclusion

A Monetary Order in the amount of \$2,890.00 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*.

Dated: May 28, 2013

Residential Tenancy Branch

