



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, 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, regulation 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 registered mail on February 2, 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 there damage to the unit and is the Landlord entitled to compensation?
4. Is there damage or loss to the Landlord and if so how much and is the Landlord entitled to compensation?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on December 1, 2012 as a fixed term tenancy with an expiry date of November 30, 2013. Rent was \$880.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$440.00 on November 5, 2012. The Landlord said the Tenants moved out of the rental unit on February 8, 2013 after give the Landlord written notice on January 23, 2013.

The Landlord said that the Tenant did not pay \$880.00 of rent for February, 2013. As well the Landlord said the Tenant left the stove and fridge in an unclean state. The Landlord said they are applying for the February, 2013 rent of \$880.00, a late rent payment fee for February, 2013 of \$25.00, \$200.00 in liquidated damages as the Tenant broke a fixed term tenancy agreement, \$10.00 to clean the fridge and stove and to retain the Tenant's security deposit as partial payment of the unpaid rent. The Landlord continued to say the late fee and the liquidated damage clauses are both in the tenancy agreement. The Landlord said they did a move in and a move out condition inspection report and they have been submitted in the Landlord's evidence package.

The Landlord concluded by saying she has re-rent the unit to new tenants on March 1, 2013.

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 did not give the Landlord proper notice to end the tenancy and the Tenant did 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 \$880.00 for the month of February, 2013.

Further as the late fee and liquidated damage clauses are both in the tenancy agreement and the Landlord's claims for these amounts are reasonable, I find for the Landlord and award the late fee of \$25.00 and the liquidated damages fee for breaking the fixed term tenancy agreement in the amount of \$200.00 to the Landlord.

Further I also accept the Landlord's testimony and evidence that the stove and fridge were not cleaned and the Landlord incurred costs of \$10.00 to clean the appliances. I award the Landlord \$10.00 for cleaning.

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:	\$ 880.00
	Late fee	\$ 25.00
	Liquidated damages	\$ 200.00
	Clean	\$ 10.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,165.00
Less:	Security Deposit	\$ 440.00
	Subtotal:	\$ 440.00
	Balance Owing	\$ 725.00

Conclusion

A Monetary Order in the amount of \$725.00 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 06, 2013

Residential Tenancy Branch