



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the two Tenants named on the application with the Application and Notice of Hearing (the "hearing package") by registered mail on February 20, 2013. The Landlord said the other two tenants are not named on the application and she did not serve them as the Landlord did not know how to contact them. Based on the evidence of the Landlord, I find that the Tenants named on the application were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

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 a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on July 1, 2012 as a fixed term tenancy with an expiry date of June 30, 2013. Rent was \$1,500.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$750.00 on July 1, 2013. The Landlord said the Tenants named on the application moved out of the rental unit on or before February 1, 2013 and the two other tenants moved out on approximately February 11, 2013. The Landlord said she had issued a 10 Day Notice to End Tenancy on February

3, 2013 for non payment of rent. The Landlord said a move in condition inspection was completed and signed and a move out inspection was not completed as the Tenants left the unit and did not communicate with the Landlord.

The Landlord said that the Tenants did not pay \$1500.00 of rent for February, 2013 so the Landlord said she issued a 10 Day Notice to End Tenancy for unpaid rent dated February 3, 2013. As well the Landlord said the remaining two tenants paid \$750.00 in cash for the February, 2013 rent and then moved out. The Landlord said the Tenants named on the application did not pay any rent for February, 2013. The Landlord continued to say that she has applied for unpaid rent for February, 2013 of \$1,500.00 less the \$750.00 paid in cash resulting in a total of unpaid rent for February, 2013 of \$750.00. In addition the Landlord said she is applying for lost rental income for part of March, 2013 in the amount of \$750.00 as she re-rented the unit on March 15, 2013 for \$1,500.00 per month.

Further the Landlord applied for damages of carpet cleaning in the amount of \$360.00, locksmith expenses in the amount of \$75.00, light bulbs in the amount of \$40.00 and cleaning costs in the amount of \$70.00. The Landlord said that she did not sent in receipts for these expenses.

The Landlord also is seeking to recover the filing fee for this proceeding of \$50.00.

The Tenants said they talked to the Landlord about moving out of the rental unit because they did not get along with the other two tenants. They said the Landlord appeared to be in agreement so they gave written notice on December 31, 2012 that they were moving out of the rental unit on February 1, 2013. The Tenant said the Landlord did not respond to their letter of December 31, 2012. The Tenant said they moved out on approximately January 27, 2013 and they thought the tenancy was over for them. The Tenant said they did not communicate with the other two tenants before or after they moved out of the rental unit. The Tenants thought that the other 2 tenants were still living in the rental unit when they move out.

The Tenants concluded their remarks by saying they gave written notice that they were moving out 1 month ahead of moving out so they do not believe they are responsible for the February and March, 2013 rent.

The Landlord closed her testimony by saying this was a fixed term tenancy that was broken before the expiry date of June 30, 2013 on the tenancy agreement and she mitigated her loss by re-renting the unit as so as possible. The Landlord said she believes the Tenants are responsible for the outstanding February, 2013 rent of \$750.00 and for the lost rental income of \$750.00 for March 1, to March 15, 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 Tenants can not end a fixed term tenancy prior to the expiry date on the tenancy agreement unless the Landlord agrees to it in writing. The Landlord may have discussed ending the tenancy with the Tenants, but the Landlord did not agree to end the tenancy in writing therefore; I find the Tenants are responsible for the rent of \$750.00 for February, 2013 and for the lost rental income for March, 2013 of \$750.00.

It should be noted that the Tenants may pursue the two other 2 tenants for the compensation paid to the Landlord for the rent for February and March 2013.

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 not provided receipts for her claims therefore the Landlord has not proven the loss or verified the losses. Consequently I dismiss without leave to reapply the Landlord's claims for carpet cleaning of \$360.00, locksmith expenses of \$70.00, light bulbs of \$40.00 and cleaning costs of \$70.00.

As the Landlord has been partially successful in this matter, she is also entitled to recover from the Tenants 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 Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 750.00	
	Lost rental income	\$ 750.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$1,550.00
Less:	Security Deposit	\$ 750.00	
	Subtotal:		\$ 750.00
	Balance Owing		\$ 800.00

Conclusion

A Monetary Order in the amount of \$800.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: 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 14, 2013

Residential Tenancy Branch