



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MND, MNR, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement, for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 3, 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.

At the start of the conference call the Landlord said the Tenant moved out of the unit prior to May 17, 2013 so an Order of Possession is not required anymore. The Landlord's request for an Order of Possession is withdrawn.

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 loss or damage to the Landlord and is the Landlord entitled to compensation?
4. Is there damage to the unit, site or property and if so 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 January 15, 2013 as a month to month tenancy. Rent is \$1,675.00 per month payable in advance of the 15th day of each month. The Tenant paid a security deposit of \$837.50 on February 15, 2013.

The Landlord said that the Tenant did not pay \$300.00 of rent for April, 2013 and \$1,675.00 of rent for May, 2013 when it was due and as a result, on April 17, 2013 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated April 15, 2013 on the door of the Tenant's rental unit. The Landlord said the total unpaid rent is \$1,975.00.

The Landlord said that she is requested monetary compensation for the following damages:

1. 80 hours of cleaning the unit, including cleaning the carpets. The Landlord said she did the work herself and she has requested \$400.00 for her labour and time.
2. \$250.00 for repairs to the pond. The Landlord said she had to purchase chemicals at a cost of \$150.00 and she estimates approximately \$100.00 of time and labour to repair the pond. The Landlord said she did not submit any receipts for these expenses.
3. \$1,500.00 for yard work and repairs. The Landlord said her husband is going to the rental unit tomorrow to cut the grass and clean the yard up. The Landlord said the \$1,500.00 is an estimate of the work to be done.
4. \$250.00 for fleas in the house. The Landlord said the Tenant had a cat in the house so she expects that there will be fleas in the house. The Landlord continued to say she did not know if there are fleas and the \$250.00 is an estimate to remove them if fleas are found in the unit.
5. \$260.00 in fuel costs. The Landlord said they live about 4 hours from the unit therefore they have fuel costs from driving back and forth. The Landlord did not submit any receipts for fuel expense.

The Landlord continued to say she is requesting to recover the filing fee of \$50.00 for this proceeding as well. The Landlord said her total claim is \$4,685.00.

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.

The Tenant did not have the right under the Act to withhold part or all of the rent for April, 2013 in the amount of \$300.00 and for May, 2013 in the amount of \$1,675.00. I find in favour of the Landlord for the unpaid rent of \$1,975.00 for April and May, 2013.

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.

I accept the Landlord's testimony that she did 80 hours of cleaning at the unit and I grant her request to be compensated in the amount of \$400.00 for her time and labour.

With respect to the Landlord's other claims for pond work, yard work, the flea issue and for fuel expenses, I find the Landlord has not proven a loss at this time because they have just taken possession of the property and the claims are only estimates of work to be done and the loss they may have. As these claims are not proven and not verified I find the Landlord has not established grounds to be awarded compensation for these claims and I dismiss these claims with leave to reapply.

As the Landlord has been partially 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:	\$1,975.00	
	Cleaning costs	\$ 400.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,425.00
Less:	Security Deposit	\$ 837.50	
	Subtotal:		\$ 837.50
	Balance Owing		\$1,587.50

Conclusion

A Monetary Order in the amount of \$1,587.50 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 29, 2013

Residential Tenancy Branch