



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by posting it on the door of the Tenants' rental unit on May 13, 2013. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

At the start of the conference call the Landlord said the Tenants have moved out of the rental unit on or about June 3, 2013. As a result the Landlord said he does not need an Order of Possession. The application for an Order of Possession is withdrawn.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 damage to the unit, sight or property and if so how much?
4. Is there a loss or damage to the Landlord and if so how much?
5. Are the Landlords entitled to compensation for loss or damage and if so how much?
6. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

The Tenants moved into the rental unit in December, 2012 and this tenancy started on March 1, 2013 as a fixed term tenancy with an expiry date of May 1, 2013. Rent is \$975.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$487.50 on December 6, 2012.

The Landlord said that the Tenants did not move out of the rental unit on May 1, 2013 as stated and agreed to in the Tenancy Agreement dated March 1, 2013. As a result the Landlords requested a Monetary order following carrying costs:

1. May and June, 2013 mortgage payments	\$ 3,299.74
2. May and June, 2013 utilities	\$ 158.02
3. May and June , 2013 Property Taxes	\$ 338.82
4. May and June, 2013 property insurance	\$ 292.00
5. Filing Fee	\$ 50.00

Total claim	\$4,138.50
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Further the Landlord said he understood that he may not be able to claim all these carrying costs, but he would like to claim the rent for May, 2013 of \$975.00 and the rent for June, 2013 of \$975.00 as well as the utilities for those same months. The Landlord only included the water utility bill and the tenancy agreement states that water is included in the rent.

The Landlord continued to say that he amended his application on June 4, 2013 to include damage to the property, but he did not supply any supporting evidence beyond photographs and a description therefore he will apply for damages and other losses at a later date.

It should be noted the amended application of June 4, 2013 was not included in the Arbitrators package so it was deemed as late and disallowed from the hearing.

The Landlord also requested to retain the Tenants' security deposit of \$487.50 and to recover the filing fee for this proceeding.

Analysis

SECTION 57 OF THE ACT SAYS:

"new tenant" means a tenant who has entered into a tenancy agreement in respect of a rental unit but who is prevented from occupying the rental unit by an overholding tenant;

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

(4) If a landlord is entitled to claim compensation from an overholding tenant under subsection (3) and a new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings.

I find that the Tenants overheld past the end of the tenancy agreement of May 1, 2013 and as a result I find the Landlord has established grounds that the Tenants are responsible for an amount of compensation to the Landlord equal to the May, 2013 rent and the rent up to June 15, 2013 for a total amount of compensation of \$1,462.50.

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 find the Landlord has not provided the required supporting evidence to establish a claim for utilities and the carrying costs of the rental unit are not part of the tenancy therefore I dismiss the Landlords request for utilities with leave to reapply and I dismiss the Landlord's request for carrying costs of \$4,088.50 without leave to reapply.

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

	Overholding Rent arrears:	\$1,462.50	
	Filing Fee	\$ 50.00	
	Subtotal		\$1,512.50
Less:	Security Deposit	\$ 487.50	
	Subtotal		\$ 487.50
	Balance Owing		\$ 1,025.00

Conclusion

A Monetary Order in the amount of \$1,025.00 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: June 10, 2013

Residential Tenancy Branch

