



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, 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, regulations or tenancy agreement, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on May 16, 2013. Based on the evidence of the Landlord, I find that the Tenants 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. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?
6. Is the Landlord entitled to keep the Tenants' security and pet deposits?

Background and Evidence

This tenancy started on April 1, 2013 as a fixed term tenancy with an expiry date of June 2, 2013. Rent was \$2,700.00 for the full term of the tenancy payable in three payments of \$900.00 each on April 19, 2013, May 3, 2013 and May 17, 2013. The Tenant paid a security deposit of \$650.00 and a pet deposit of \$350.00 on April 15,

2013. The Landlord said the Tenant moved out of the rental unit on May 1, 2013 without proper notice. The Tenant said they did not complete a move in or move out condition inspection report and the Tenants did not give the Landlord a written forwarding address when they left. The Landlord agreed that no condition inspection reports were completed.

The Landlord said that the Tenant moved out without proper notice on May 1, 2013 and did not pay the rent payments due for the fixed term tenancy for May 3, 2013 of \$900.00 and May 17, 2013 of \$900.00. As well the Landlord said the Tenants did not return the keys to the unit and he incurred expenses of \$168.00 to rekey the doors. The Tenant said they did not return the keys because the Landlord said they did not have too. The Landlord said he asked for the keys and the Tenants did not return them.

Further the Landlord said he is claiming damages for repairs to the floor in the amount of \$224.00, replacement of door knobs of \$25.71, carpet cleaning costs of \$93.58 and repairs to a retaining wall in the amount of \$567.00. The Landlord submitted paid receipts for the damages, but the Landlord had no evidence to show the condition of the rental unit at the start of the tenancy. The Landlord said his total claim is \$1,878.29.

The Tenant said she did not understand she had signed a fixed term tenancy so she thought they could end the tenancy early if they wanted to. With respect to the damages the Tenant said the floor was damaged when they moved in, the door knobs were all there when they moved out, they cleaned the unit before moving and the retaining wall was just some wood planks that were not in good condition at the start to the tenancy. The Tenant said they did build a ramp on the wall, but the wall was not in good condition at the start of the tenancy.

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 did not give the Landlord proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the unpaid rent of \$1,800.00 for this fixed term tenancy.

As well the Tenants are responsible to return the keys to a rental unit when they move out and as the Tenant said they did not return the keys, I find the Tenants responsible for the cost to rekey the rental unit in the amount of \$168.00.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As no condition reports were done on move in or on move out it is not possible to determine if any damage was done or if damage was done to the unit how much damage was done. Consequently the Landlord cannot establish proof that the Tenant damaged the rental unit or left it in a condition that was not similar to the start of the tenancy. As a result of lack of proof to establish the condition of the rental unit at the start or the end of the tenancy, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

As the Landlord has been partially successful in this matter, the Landlord 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 Tenants' security and pet deposits in payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,800.00	
	Rekeying	\$ 168.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,018.00
Less:	Security Deposit	\$ 650.00	
	Pet Deposit	\$ 350.00	
	Subtotal:		\$ 900.00
	Balance Owing		\$ 1,118.00

Conclusion

A Monetary Order in the amount of \$1,118.00 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: August 21, 2013

Residential Tenancy Branch