



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, 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 Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 18, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' 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. 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 Tenant's security deposit?

Background and Evidence

This tenancy started on March 3, 2012 as a fixed term tenancy with an expiry date of August 1, 2012 and then a new fixed term tenancy agreement was completed starting September 1, 2012 and expiring August 1, 2013. Rent was \$1,500.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$750.00 on March 2, 2012 and a pet deposit of \$150.00 on August 9, 2012. The Landlord said on April 17, 2013 the Tenant gave him Notice that she was moving out of the unit on or about May 30, 2013 because she could no longer afford the rental unit. The Landlord said he re-rented the unit on July 1, 2013.

The Landlord said the Tenant cancelled the June, 2013 rent cheque so the Landlord said he has applied for the unpaid rent for June, 2013 of \$1,500.00 as this was a fixed term tenancy expiring August 31, 2013 and he was only able to re-rent the unit for July 1, 2013. As well the Landlord said the Tenant has utility bills of \$202.82 for hydro and 108.50 for gas. The Landlord provided paid receipts for the utility bills in the evidence package.

Further the Landlord said that there is a liquidated damages clause in the tenancy agreement for \$450.00 which represents the costs to re-rent the unit. The Landlord said he has advertising costs, travel costs to show the unit and telephone costs because he was living in Calgary when the Tenant moved out. The Landlord said the liquidated damages represent pre estimated costs he incurred because the Tenant broke the tenancy agreement and moved out early.

The Landlord continued to say he has also claimed the following costs:

- Carpet cleaning costs of \$55.09. (receipt provided)
- Cleaning costs of \$300.00. (receipt provided)
- NSF cheque costs of \$40.00 (cheques provided)

As well the Landlord said that he and the Tenant agreed to \$100.00 to be deducted from the security deposit for damage to the window sill and floor, which is confirmed in copies of emails exchanged between the Landlord and Tenant. The Landlord continued to say that he is also claiming \$32.00 for his time to haul garbage to the dump and \$45.00 in cleaning supplies and materials that he used to clean and repair damage to the unit.

The Landlord said he included the move in condition inspection report which was signed by the Tenant and the move out condition inspection report that the Tenant did not participate in, but was given 3 written opportunities to participate in. The Landlord said the condition inspection reports support his claims.

The Landlord also requested to recover the filing fee of \$50.00 and to retain the Tenant's security deposit of \$750.00 and pet deposit of \$150.00.

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.

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 Landlords proper notice to end the fixed term tenancy and the Tenant does 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 \$1,500.00 for June, 2013. Unpaid utilities are treated as unpaid rent if the Landlord gives the Tenants a formal demand to pay the utility bills. I find the Landlord has given the Tenant that demand in the application and therefore I award the Landlord \$202.82 for hydro costs and \$108.50 for gas costs that the Landlord has paid.

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 proved the loss existed and he verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord testimony that these damages and losses were caused by the Tenant and the costs were reasonable amounts to make repairs and to clean the unit. I award the Landlord \$55.09 for carpet cleaning, \$300.00 for cleaning the unit, \$100.00 for damage to the window sill and floor, \$40.00 for NSF cheques, and \$77.00 for the Landlord's time and materials to do cleaning and repairs to the unit.

As well the Landlord acted quickly to put a new tenant in the unit to minimize the Tenant's responsibilities for the rent on a fixed term tenancy. Consequently, I find the Landlord has established grounds to be awarded the costs for liquidated damages in the amount of \$450.00 as stated in the tenancy agreement.

As the Landlord has been 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 Tenant's security deposit and pet deposits in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 1,500.00
Unpaid utilities:	\$ 311.32
Liquidated Damages	\$ 450.00
Cleaning and repair costs	\$ 532.09
NSF charges	\$ 40.00
Recover filing fee	\$ 50.00
Subtotal:	\$2,883.41

Less:	Security Deposit	\$ 750.00
	Pet Deposit	\$ 150.00
	Subtotal:	\$ 900.00
	Balance Owing	\$ 1,983.41

Conclusion

A Monetary Order in the amount of \$1,983.41 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: September 23, 2013

Residential Tenancy Branch

