



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MELECTRA ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, 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's Agent said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on September 3, 2013. Based on the evidence of the Landlord's Agent, 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 in the Tenants' absence.

At the start of the conference call the Landlord's Agent said the Tenants have moved out of the rental unit so they no longer require an Order of Possession for the rental unit. The Landlord's Agent said they are withdrawing the application for an Order of Possession.

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 deposit?

Background and Evidence

This tenancy started on November 1, 2012 as a fixed term tenancy with an expiry date of August 31, 2013. The tenancy agreement requires the Tenants to move out of the rental unit on the expiry date of August 31, 2013. The move out clause in the tenancy agreement is initialed by both the Landlord and the Tenants. Rent was \$1,250.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$625.00 on October 26, 2012. The Landlord said the Tenant moved out of the rental unit on September 8, 2013 as a result of the Landlord receiving an Order of Possession from an earlier Hearing in which the Landlord applied for an emergency early end to the tenancy and was successful.

The Landlord said that the Tenant did not pay rent of \$1,250.00 for August, 2013, and because the Tenants did not move out until September 8, 2013 and the Tenants left the rental unit in very poor condition the Landlord said they were unable to rent the unit until October, 2013. As a result the Landlord is requesting lost rental income for September, 2013 in the amount of \$1,250.00. The Landlord also requested the recovery of a \$25.00 NSF fee charged to him by the bank for the August, 2013 rent cheque being returned.

Further the Landlord's agent said they are requesting \$312.50 in liquidated damages which is an administration fee charged by the Property Manager to re-rent the property. The Landlord's agent said this item is not in the tenancy agreement, but he included a paid receipt for it in the evidence package.

The Landlord's agent continued to say that the Tenants had fires in the yard of the rental unit which was against the law and resulted in damage to the Landlord's property and a neighbour's property. The Landlord's agent said they are claiming \$800.00 for a shed on the Landlord's property that the Tenants burned down, \$350.00 for cleanup of the fire and \$150.00 to clean and haul debris away from the Landlord's property.

In addition the Landlord's agent said the fires the Tenants had damaged the neighbour's garage and repairs to the garage cost \$500.00 and the Landlord had to replace an outdoor security camera in the amount of \$49.99 and a motion detector in the amount of \$139.99.

The Landlord's agent said they have included paid receipts for all of the above claims and the total claim including the filing fee of \$50.00 is \$4,877.48.

The Landlord said in closing that the house was left in a mess and he incurred additional expenses to clean it, but he has not included these costs in this application. The Landlord said they have rent the unit for October, 2013 to new tenants.

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 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 for August, 2013 in of \$1,250.00. I also grant the Landlord the NSF bank charge of \$25.00 for the returned August, 2013 rent cheque.

Further as the Tenants overheld the fixed term tenancy by staying in the unit until September 8, 2013 and the Tenants left the rental unit in a condition that was not rentable; I find the Landlord has established grounds to be awarded the September, 2013 rent of \$1,250.00 as lost rental income.

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.

With respect to the fire damage claim for the neighbour's property I accept the Landlord's agent and Landlord's testimony and evidence and I award the Landlord \$500.00 for shed repairs, \$49.99 for a security camera and \$139.99 for the motion detector. The Landlord has established grounds to prove losses in these amounts and he has verified the loss with paid receipts.

In regard to the fire damage claim to the Landlord's property I accept the Landlord's agent and the Landlord's testimony and evidence and I award the Landlord \$800.00 for a replacement shed, \$350.00 for fire clean up and \$150.00 to clean and haul debris away. The Landlord has established grounds to prove losses in these amounts and he has verified the loss with paid receipts.

The Landlord has also requested an administration fee of \$312.50 which he explained is a fee charged by the Property Manager to rent the property to a new tenant. This fee is not included in the tenancy agreement therefore it does not comply with the Residential Tenancy Branch Policy Guideline #4 which says a liquidated damages clause must be in the tenancy agreement and is a pre-estimation of costs to re-rent a unit when a tenancy ends in a manner that is not covered by the tenancy agreement. Consequently as the administration fee is not in the tenancy agreement I dismiss this part of the claim without leave to reapply.

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 Tenants' security deposit in payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,250.00
	Lost rental income	\$ 1,250.00
	Late rent fees	\$ 25.00
	Fire damage and clean up	\$ 1,989.98
	Recover filing fee	\$ 50.00
	Subtotal:	\$4,564.98
Less:	Security Deposit	\$ 625.00
	Subtotal:	\$ 625.00
	Balance Owing	\$ 3,939.98

Conclusion

A Monetary Order in the amount of \$3,939.98 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: October 09, 2013

Residential Tenancy Branch