



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 she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on September 19, 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.

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 month to month tenancy. Rent was \$950.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$475.00 on November 1, 2012. The Landlord said the Tenants moved out of the rental unit on August 31, 2013 as a result of a 1 Month Notice to End Tenancy dated June 25, 2013. The Landlord said the tenancy ended on August 31, 2013.

Further the Landlord said that a move in condition inspection report was done at the beginning of the tenancy, but it appears to have been misplaced so it was not sent in

with the evidence package. The Landlord said a move out condition inspection report was completed in the absences of the Tenants on August 31, 2013. The Landlord continued to say the Tenants did give her their forwarding address by text message at the end of the tenancy.

The Landlord said that the Tenant did not pay rent of \$40.00 for July, 2013 and \$750.00 of unpaid rent for August, 2013. Further the Landlord said the Tenants left the unit in such poor shape that they were unable to re-rent the unit until September 15, 2013. The Landlord said they had interested new tenants for September 1, 2013, but the unit needed cleaning and repairs so they lost the potential new tenants. The Landlord said they are requesting lost rental income for September 1, 2013 to September 15, 2013 in the amount of \$475.00.

The Landlord continued to say because of the condition the unit was left in she is claiming the following items:

1. Carpet cleaning	\$140.70
2. Lino repairs	\$200.00
3. Carpet repairs	\$200.00
4. Wall repairs	\$200.00
5. Bathroom door repairs	\$100.00
6. Bifold door repairs	\$ 50.00
7. Paint	\$ 50.00
8. Lost key fob	\$ 60.00
9. Cleaning the unit	\$270.00
10. Dump fees	\$ 50.00
Total	\$1,320.70

The Landlord said she submitted receipts for some of the claims but not all of them. As well the Landlord said she submitted photographs to support their damage claim.

The Landlord also requested the recovery of the filing fee of \$50.00 for this proceeding.

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 July, 2013 of \$40.00 and the unpaid rent for August of \$750.00. In addition I accept the Landlord's testimony

and evidence that the rental unit was left in very poor condition and as a result of the condition the Landlord was unable to rent the unit until September 15, 2013 and this resulted in the Landlord losing $\frac{1}{2}$ a month's rent in the amount of \$475.00. I award the Landlords \$475.00 for lost rental income for $\frac{1}{2}$ for September, 2013 rent.

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.

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 the Landlord said she is unable to establish the condition of the rental unit at the start of the tenancy because the move in condition inspection report is unavailable, I find that the Landlord has not established proof that the Tenants damaged the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With that said I also accept that the Landlord have established prove that the unit was left in an unclean state and I accept the Landlord's costs to clean the rental unit. I award the Landlord \$147.70 for carpet cleaning and \$270.00 for general cleaning of the unit.

Further as the Landlord did not provide receipts for the lost key fobs and the dump fees these expenses are not proven and therefore I dismiss these two items without leave to reapply.

As the Landlord has partially been successful in this matter, the Landlords are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 790.00
	Lost Rental Income	\$ 475.00
	Carpet cleaning	\$ 147.70
	General cleaning	\$ 270.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,732.70
Less:	Security Deposit	\$ 475.00
	Subtotal:	\$ 475.00
	Balance Owing	\$ 1,257.70

Conclusion

A Monetary Order in the amount of \$1,257.70 has been issued to the Landlords. 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: November 04, 2013

Residential Tenancy Branch

