



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNDC, MNSD
 Landlord OPR, OPC, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and for the return of double the Tenant's security deposit.

Service of the hearing documents by the Landlord to the Tenant were done by personal delivery on October 24, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by posting it on the Landlord's door on November 21, 2013 at 9:30 in the evening. The Landlord said she did not receive the Tenant's hearing package even though she was at home on the evening of November 21, 2013.

At the start of the conference call the Landlord said the Tenant moved out of the rental unit on October 4, 2013 and therefore the Landlord has possession of the unit and no longer needs an Order of Possession. The application for an Order of Possession is withdrawn from the application.

Issues to be Decided

Landlord:

1. Is there damage or loss to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for damage or loss and if so how much?
3. Is there unpaid rent and if so how much?
4. Is the Landlord entitled to unpaid rent and if so how much?
5. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is there damage or loss to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on August 1, 2013 as a month to month tenancy. Rent was \$950.00 per month payable on the 1st day of each month. The tenancy agreement called for a security deposit of \$475.00, but the Tenant paid a security deposit of \$420.00 in advance of the tenancy. The Landlord said the Tenant could not pay the full security deposit so they accepted the \$420.00 as the deposit.

The Landlord said they issued a 1 Month Notice to End Tenancy for Cause on August 19, 2013 with an effective vacancy date of September 30, 2013. The Landlord continued to say the Tenant filed a dispute resolution application that was to dispute the Notice to End Tenancy and it was to be heard on October 7, 2013, but the Tenant moved out October 4, 2013 so the hearing was in affect after the fact. The Landlord said this is important because it shows the Tenant wanted to continue to live in the unit for October, 2013 and so the Landlord could not make plans to rent the unit to new tenants for October, 2013. As a result the Landlord said she is applying for unpaid rent for September, 2013 in the amount of \$950.00 and lost rental income in the amount of \$950.00 for October, 2013 and to retain the Tenant's security deposit of \$420.00 as partial payment of the unpaid rent.

The Landlord continued to say she is also requesting the recovery of the filing fee of \$50.00 from the Tenant.

The Tenant said this was a bad tenancy and there were difficulties between the Landlord and himself and as a result there was a no contact Order issued between them. The Tenant continued to say he paid the September, 2013 rent by putting cash in an envelope and dropping it in the Landlord's mail box on September 1, 2013. The Tenant said he provided two letters from witness that say they saw the Tenant put the

rent payment in the mail box/slot of the Landlord's house. The Landlord said she did not receive the September, 2013 rent payment.

The Tenant continued to say that as the Landlord gave him an eviction notice for September 30, 2013 therefore he is not responsible for the October, 2013 rent, even though the Tenant said they decided to move out of the unit on October 2, 2013. The Tenant said he included a letter from the person who helped move him out that confirms they moved out of October 2, 2013. The Landlord said she submitted photographs of the Tenant moving out of the unit that are dated stamped October 4, 2013.

The Tenant continued to say that he has not received his security deposit back and he was told that he could receive double the deposit if he applied for it. The Tenant's application indicates he is applying for double the security deposit of \$475.00 in the amount of \$950.00 even though the Tenant agreed he only paid a security deposit of \$420.00.

The Tenant had no closing remarks and the Landlord say they just want to be paid the rent that is due to them.

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.

Further:

Section 45 of the Act says a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

The Tenant said he decided to move out of the rental unit prior to the Hearing of October 7, 2013 which was to dispute the Notice to End Tenancy dated August 19, 2013 and he did so without proper notice to the Landlord; therefore I find the Tenant is responsible for the October, 2013 rent of \$950.00. As well I accept the Landlord's testimony that the Tenant did not pay the September rent of \$950.00 as the Tenant had no acceptable corroborating evidence to prove the September, 2013 rent was paid. In difficult rental situations a tenant can pay the rent by cheque or money order so that

they have a record of the rent being paid. I do not accept the witness letters which are not notarized saying that they saw the Tenant pay the rent.

Consequently I award the Landlord a compensation for the September rent of \$950.00 and lost rental income for the October, 2013 rent of \$950.00.

With regard to the Tenant application for double the security deposit in the amount of \$950.00, I find the Landlord made her application within the 15 days allowed under the Act, for a claim for unpaid rent against the Tenant's security deposit. Consequently I dismiss the Tenant's claim for double the security deposit for \$950.00 without leave to reapply.

Further as the Landlord has been partially successful in this matter, she 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 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid rent for September	\$ 950.00
	Loss rental income for October	\$ 950.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,900.00
Less:	Security Deposit	\$ 420.00
	Subtotal:	\$ 420.00
	Balance Owing	\$ 1,480.00

Conclusion

A Monetary Order in the amount of \$1,480.00 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.

The Tenant's application is dismissed without leave to reapply.

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: December 02, 2013

Residential Tenancy Branch

