



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, to retain the Tenants' security deposit, for loss or damage under the Act, regulations or tenancy agreement 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 October 22, 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. Is there lost rental income and if so how much?
4. Is the Landlord entitled to compensation for lost rental income and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy was to start on October 1, 2013 as a fixed term tenancy with an expiry date of September 30, 2014. Rent was \$1,625.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$825.00 in advance of the tenancy. The tenancy agreement was signed by all parties on September 13, 2013.

The Landlord said the Tenants did not move into the rental unit and did not make any arrangements to end the tenancy with his agreement. The Landlord said he was told the Tenants were not moving in approximately 7 days before the tenancy was to start. The Landlord said he explained to the Tenants that they were responsible for the rent for the full contract unless he could find new tenants to replace them. The Landlord said he advertised on Craig List on the internet and he showed the rental unit to several

potential tenants. The Landlord said he was unable to rent the unit until November 1, 2013 and he had to reduce the rent by \$100.00 as it was later in the winter and units are more difficult to rent as the winter goes on. The Landlord said he rent the unit to new tenants for November 1, 2013 at \$1,550.00 per month.

As a result of the Tenants breaking the tenancy agreement the Landlord said he has applied for unpaid rent for October, 2013 in the amount of \$1,650.00 and for the loss of rental income of \$100.00 for the months of November, 2013 through to September, 2014(the expiry date of the tenancy agreement). The Landlord said his claim is for unpaid rent of \$1,650.00, lost rental income of \$1,100.00 and the filing fee of \$50.00 for a total amount of \$2,800.00.

The Tenant said they phoned the Landlord's wife seven days before the tenancy was to start and said their son was not going to move in with them so they could not afford the rental unit. As a result the Tenant said they were not moving in the unit and the Landlord could keep a portion of their security deposit as compensation for unpaid rent.

The Tenant said they have limited financial resources and they are not able to pay the Landlord the unpaid rent for October, 2013 or any compensation for lost rental income. The Tenant said she understood they signed a tenancy contract which made them responsible for the rent until September, 2014, but circumstances changed and they are not able to afford the rental unit or the Landlord's claim.

The Parties were offered an opportunity to settle the dispute themselves. The Landlord said he was willing to listen to an offer from the Tenant. The Tenant said she did not know what to say and so the Tenant made no offer to the Landlord to settle the claim.

The Tenant said in closing that she does not have the financial resources to pay the Landlord's claims.

The Landlord said in closing that he has financial obligations as well and he believes the Tenants are responsible for the amount of unpaid rent and lost rental income that he has applied for.

Analysis

Section 16 of the Acts says the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

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 have the right to end the tenancy without the agreement of the Landlord 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 rent of \$1,650.00 for the month of October, 2013.

Further I find the Landlord made efforts to minimize the losses from the tenancy by advertising the unit as soon as he knew the Tenants were not going to honour the agreement and the Landlord rented the unit at his first opportunity. As well I accept the Landlord's testimony that he had to reduce the rent by \$100.00 to insure a quick rental. Consequently, I accept the Landlord's claim for lost rental income of \$100.00 for 11 months in the amount of \$1,100.00.

As the Landlords have been successful in this matter, he is also entitled to recover from the Tenants 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 partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,650.00
	Lost rental income	\$ 1,100.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 2,800.00
Less:	Security Deposit	\$ 825.00
	Subtotal:	\$ 825.00
	Balance Owing	\$ 1,975.00

Conclusion

A Monetary Order in the amount of \$1,975.00 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: January 21, 2014

Residential Tenancy Branch