



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RICK MANGAT &
TINA CIACCIA MANGAT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, FF, SS

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 an alternative way to serve the respondent and to recover the filing fees for these proceeding.

In addition the Landlord indicated that the Tenants told the Landlord to use their security deposit of \$1,400.00 for the August, 2013 rent payment. As a result the Landlord did not check off the box on the application to keep the Tenants security deposit, but at hearing the Landlord requested to keep the Tenants' security deposit of \$1,400.00 as partial payment of unpaid rent.

I accept the Landlord's request to amend the application to include the Tenants' security deposit as partial payment for unpaid rent.

The Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by email on December 16, 2013. Based on the evidence of the Landlord and the decision dated December 10, 2013 authorizing substitute service by email, 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. Is there damage and if so how much?
4. Is the Landlord entitled to compensation for damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposits?

Background and Evidence

This tenancy started on July 31, 2013 as a fixed term tenancy with an expiry date of September 30, 2013. Rent was \$3,600.00 per month payable the last day of each month and parking charges were \$135.00 per month. The Tenant paid a security deposit of \$1,400.00 on July 29, 2013. The Landlord said the Tenants moved out of the rental unit on or before September 30, 2013. The Landlord said a move in condition inspection was completed and signed on July 29, 2013 and a move out inspection was completed on October 1, 2013, but not signed by the Tenants as they did not attend the move out condition inspection. As well the Landlord said he did not receive a forwarding address from the Tenants so he sent the move out condition inspection report to the Tenants by email after he received authorization to serve the Tenants by email.

The Landlord said that the Tenants did not pay \$3,600.00 of rent and \$135.00 of parking for September, 2013 and the Tenants did not pay \$1,400.00 of rent for August, 2013. The Landlord said the Tenants did authorize him to use their security deposit for the August rent, but the Landlord would like a decision by the Residential Tenancy Branch with respect to this.

Further the Landlord said the Tenants took a duvet from the master bedroom worth \$239.99 which the Landlord had to replace (receipt included in the evidence package). The Tenants did not clean the bedding and towels in the unit as agreed in the tenancy agreement and therefore the Landlord is claiming the fee stated in the tenancy agreement of \$350.00 if the bedding and towels are not cleaned. The Landlord provided photographs and the move out condition inspection report in support of this claim. The Landlord also said he is claiming repairs and painting of a wall the Tenants damaged in the amount of \$150.00 which he submitted photographs, the inspection reports and the receipt for the work. The Landlord continued to say he had to pay \$218.00 for clean of the unit as the Tenants did not clean the unit when they left. The Landlord said the receipt for cleaning is in the evidence package.

As well the Landlord requested to recover the filing fees for this application and the application for substituted service in the amount of \$50.00 and \$25.00 for a total of \$75.00.

The Landlord said his total claim is for \$4,767.99.

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 rent of \$3,600.00 for September, 2013 and parking charges for September 2013 of \$135.00 as well as unpaid rent of \$1,400.00 for August, 2013. I find for the Landlord in the amount of \$5,135.00 of unpaid rent.

For a monetary claim for damage or 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.

I accept the Landlord's testimony and evidence of the condition inspection reports and receipts for his claims of cleaning in the amount of \$218.00, for the missing duvet in the amount of \$239.99 and for the wall repairs in the amount of \$150.00; therefore I award these amount to the Landlord.

Further, I also accept the clause in the tenancy agreement addendum stating a charge of \$350.00 will be levied if towels and bedding are not cleaned at the end of the tenancy. I accept the Landlord's testimony and evidence that this was not done and therefore award the cleaning costs in the tenancy agreement of \$350.00.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding and the \$25.00 for the proceeding for substitution of service. 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:	\$ 5,135.00	
	Replacement duvet	\$ 239.99	
	Cleaning bedding and towels	\$ 350.00	
	Repairing wall	\$ 150.00	
	Cleaning	\$ 218.00	
	Filing fees	\$ 75.00	
	Subtotal:		\$6,167.00
Less:	Security Deposit	\$ 1,400.00	
	Subtotal:		\$ 1,400.00
	Balance Owing		\$ 4,767.99

Conclusion

A Monetary Order in the amount of \$4,767.99 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: February 04, 2014

Residential Tenancy Branch

