



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STEWART VERNON VENTURES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on January 24, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

At the start of the conference call the Landlord said the Tenant moved out of the unit sometime in February, 2014 so they do not require an Order of Possession as they have possession of the unit. The Landlord withdrew the request for an Order of Possession in the application.

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 the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on July 1, 2006 as a month to month tenancy. Rent is \$825.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$350.00 on June 26, 2006.

The Landlord said that the Tenant did not pay \$500.00 of rent for December, 2013 and \$825.00 of unpaid rent for January, 2014 when it was due and as a result, on January 11, 2014 he personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 11, 2014 to an adult over the age of eighteen who appeared to live at the rental unit. The Landlord said the Tenant has unpaid rent for February, 2014

in the amount of \$825.00 and the Landlord is claiming lost rental income for March, 2014 in the amount of \$825.00 as the Landlord did not know when the Tenant was moving out of the unit and the unit is in such poor condition that it is not possible to rent the unit until repairs and renovations are completed. The Landlord said a move in condition report was completed, but no move out condition report was completed with the Tenant as the Tenant abandoned the unit.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding and his postage costs of \$11.24.

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 Tenant does 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 \$500.00 for December, 2013, \$825.00 for January, 2014 and for \$825.00 for February, 2014. I award the Landlord \$2,150.00 for unpaid rent.

Further the Landlord has requested the March, 2014 rent of \$825.00 for lost rental income because the unit was in such poor condition that it could not be rented. The Landlord indicated they may be making a further application for damages, but in this application the Landlord has not provided any evidence that the unit was in such poor condition because of the Tenant's actions that the unit could not be rented. Due to lack of evidence to show the condition of the unit I dismiss with leave to reapply the Landlord's claim for loss of rental income due to the condition of the unit.

Further I dismiss without leave to reapply the Landlord's claim for postage costs of \$11.24 as it is an ineligible claim for the application.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenant 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 Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 2,150.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 2,200.00
Less:	Security Deposit	\$ 350.00
	Accrued Interest	\$ 11.50
	Subtotal:	\$ 361.50
	Balance Owing	\$ 1,838.50

Conclusion

A Monetary Order in the amount of \$1,838.50 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.

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: March 11, 2014

Residential Tenancy Branch

