



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, 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 Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 20, 2013. 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 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 a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 1, 2013 as a month to month tenancy. Rent was \$1,050.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$525.00 in the month of May, 2013.

The Landlord said they obtained an Order of Possession for the Tenant to move out of the unit for November 30, 2013, but the Tenant did not move out of the unit until December 1, 2013. The Landlord continued to say that they are applying for lost rental

income for the month of December, 2013 as they were unable to advertise and rent the unit for December 1, 2013 due to the Tenant holding over in the unit. The Landlord said they are requesting the December, 2013 rent of \$1,050.00 plus the filing fee of \$50.00 and to retain the security deposit of \$525.00 as partial payment of the lost rental income. The Landlord said their total claim is for \$575.00 plus the security deposit of \$525.00.

The Tenant said that she was not moved out of the unit by November 30, 2013 and that the Landlord gave her a note to sign indicating that she would be moved out of the unit by December 1, 2013 and that the Landlord could deduct \$100.00 from her security deposit for the delay in moving. The Landlord agreed that he wrote the note but the Landlord said it was not an extension of the tenancy but an agreement to have the Tenant out of the unit by December 1, 2013.

The Tenant continued to say that when she came back to the unit at 10:30 p.m. on December 1, 2013 to collect her remaining belongings the Landlord had put them in the back yard. The Tenant said she lost food and some of her things were damaged.

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.

Section 45 of the Act says a Tenant may end a period term tenancy not earlier than one month prior to the date that rent is payable or with the agreement of the Landlord and it must be in writing.

The Tenant did not give the Landlords proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore as the Tenant over held in the rental unit until December 1, 2013 I find the Tenant is responsible for the rent of \$1,050.00 for December, 2013.

As the Landlords have been 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:	\$ 1,050.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,100.00
Less:	Security Deposit	\$ 525.00
	Subtotal:	\$ 525.00
	Balance Owing	\$ 575.00

Conclusion

A Monetary Order in the amount of \$575.00 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.

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: April 08, 2014

Residential Tenancy Branch

