



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee for this proceeding, to keep the Tenant's security deposit in partial payment of those amounts and for other considerations.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on March 21, 2014. 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 in the Tenants' absence.

During the conference call the Landlord said the Tenant moved out of the rental unit on March 31, 2014 and therefore the Landlord has possession of the unit and does not require an Order of possession. The Landlord said she withdraws the request for an Order of possession.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for unpaid rent and if so how much?
2. Is there a loss or damage to the Landlord and if so how much?
3. Is the Landlord entitled to compensation for the loss or damage and if so how much?
4. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 1, 2001 and was renewed many times with the latest tenancy agreement starting on December 1, 2010 as a fixed term tenancy with an expiry date of December 31, 2012. Renewal of the tenancy after December 31, 2012 was on a month to month basis. Rent is \$1,020.00 per month payable in advance of the

1st day of each month. The Tenant paid a security deposit of \$412.50 on December 1, 2001.

The Landlord said that the Tenant did not pay \$1,020.00 of rent for March, 2014 when it was due and as a result, on March 7, 2014 the Landlord register mailed a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 7, 2014. The Tenant is deemed to have been served on March 12, 2014. The Landlord said the Tenant has earned some credits in the amount of \$550.00 against the unpaid rent for work done on the property. As a result the unpaid rent and utilities is \$748.28 as of the hearing date May 6, 2014.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding and to retain the Tenant's security deposit and accrued interest in the amount of \$428.18.

Analysis

Section 26 (1) 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.

I find that the Tenant has not paid the overdue rent and utilities and has not applied for dispute resolution therefore the Tenant does not have the right to with hold part or all of the unpaid rent and utilities. Consequently, I find pursuant to s. 67 of the Act that the Landlord is entitled to a Monetary Order. The Landlord is entitled to recover unpaid rent and utilities for March, 2014 in the amount of \$748.28.

As the Landlord has been 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 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:	\$ 748.28	
	Recover filing fee	<u>\$ 50.00</u>	
	Subtotal:		\$798.28
Less:	Security Deposit	\$ 412.50	
	Accrued Interest	<u>\$ 15.68</u>	
	Subtotal		\$428.18
	Balance Owing		\$ 370.10

Conclusion

A Monetary Order in the amount of \$370.10 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: May 06, 2014

Residential Tenancy Branch

