



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LANDLORD: MNR, MNSD, MNDC, FF
TENANT: MNDC, MNSD, RPP, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit, to recover personal property and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on February 25, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on February 28, 2014 in accordance with section 89 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages or losses to the Landlord and if so how much?
2. Is the Landlord entitled to compensation for damage or loss and if so how much?
3. Is there unpaid rent and if so how much?
4. Is the Landlord entitled to unpaid rent and if so how much?
5. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on January 1, 2014 as a fixed term tenancy for 1 year with an expiry date of December 31, 2014. Rent was \$900.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$450.00 in advance of the tenancy.

The Landlord said the Tenant moved out of the rental unit on February 2, 2014 without proper notice. As a result the Landlord said she is seeking monetary compensation for the following:

- Unpaid rent in the amount of \$60.00
- Suite cleaning in the amount of \$60.00
- Carpet cleaning in the amount of \$50.00
- Lost rental income of \$600.00 as the Landlord said the February, 2014 rent was not paid and the unit was no rented until March 15, 2014.
- Replacement key for \$10.00.
- Liquidated damages as per the tenancy agreement of \$450.00.
- Moving furniture labour costs of \$55.00.
- Replace a cookie sheet for \$10.08
- Retain the Tenant's security deposit of \$450.00.

The Landlord said her total claim is for \$1,295.08 less the security deposit of \$450.00 which equals \$845.08.

The Tenant said she moved out of the unit on February 28, 2014 and she paid the February, 2014 rent by cheque. The Tenant said she moved out because the Landlord told her she could not live there anymore because her son had moved in and he had health issues. As well the Tenant said after a week in the unit the Landlord had to repair the plumbing and she had to move out for a week. The Tenant said she has applied for the return of her security deposit of \$450.00 and \$103.00 for items that were stolen from her unit during the tenancy. The items were a cloths drying rack for \$30.00, a cookie sheet for \$3.00, glass candle for \$10.00, a silk scarf for \$10.00, a mop bucket for \$10.00, and a bottle of whiskey for \$40.00. The Tenant said she is claiming \$103.00 for her lost items.

The Landlord said the Tenant moved out on February 2, 2014 and to prove it the Tenant sent the Landlord a registered mail letter with the Tenant's forwarding address in it and the keys to the unit on February 5, 2014. The Landlord provided a copy of the registered mail envelope and tracking information in the evidence.

The Tenant provide a witness K.H. who gave affirmed testimony that the Tenant paid the February rent by cash and lived in the unit until the end of February, 2014.

The Landlord said the Tenant did not pay the February, 2014 rent and she tried to serve the Tenant her hearing package in person at the Tenant's new address on February 25, 2014, but the Tenant would not accept the hearing package so the Landlord registered mailed the hearing package to the Tenant on February 25, 2014.

The Landlord said in closing that the Tenant did not pay the February, 2014 rent, there was no notice to end the tenancy, the Tenant left the unit unclean, the furniture had been moved and the tenancy agreement indicates a liquidated damage fee of \$450.00 if the Tenant breaches the tenancy agreement which the Tenant did by breaching the fix term of the agreement.

The Tenant said in closing that she feels the Landlord is taking advantage of the people living at the rental complex and the Tenant would like her security deposit of \$450.00 returned.

Analysis

There was contradictory testimony given by the parties regarding when the tenancy ended and if the February, 2014 rent was paid. The Landlord provided a copy of a registered mail envelope from the Tenant with the Tenant's new address on the envelope which is dated February 5, 2014; therefore I accept the Landlord's testimony that the Tenant moved out of the unit on or before February 5, 2014. Consequently the Tenant breached the fixed term tenancy agreement.

Further I find there is inconsistency in the Tenant's testimony and the Witness's testimony about the payment of the February, 2014 rent. The Tenant said she paid the February, 2014 rent by cheque and the Witness said the rent was paid by cash. As well the Landlord said the rent was not paid. Based on the balance of probabilities I accept the Landlord's testimony that the rent was not paid for February, 2014.

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 Tenant did not give the Landlord 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. Consequently, I find the Tenant is responsible for the rent of \$900.00 for the month of February, 2014.

As well, the Landlord has provided the tenancy agreement which has a clause indicating a liquidated damage fee of \$450.00 if the Tenant breaches the tenancy agreement. The clause is initialled by both parties. As the Tenant moved out of the rental unit before the expiry date of the tenancy agreement and there was no agreement to end the tenancy in writing; I find the Tenant is responsible for liquidated damages in the amount of \$450.00.

For a monetary claim for damage of 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.

The Landlord has not provided receipts or invoices to prove the loss and to verify the loss of the following items; therefore I dismiss without leave to reapply the Landlord's claims for suite cleaning, carpet cleaning, key replacement, moving furniture and for the replacement of the cookie sheet.

With regard to the Tenant application for compensation for lost items during the tenancy in the amount of \$103.00 I find that the Tenant has not provided proof of the loss nor has the Tenant verified the loss with receipt. Consequently I dismiss the Tenant's claim for lost items in the amount of \$103.00 without leave to reapply.

As the Landlord has been partially 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 Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Loss rent:	\$ 900.00
	Liquidated damages	\$ 450.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,400.00
Less:	Security Deposit	\$ 450.00
	Subtotal:	\$ 450.00
	Balance Owing	\$ 950.00

Conclusion

A Monetary Order in the amount of \$950.00 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.

The Tenant's application is dismissed without leave to reapply.

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: June 11, 2014

Residential Tenancy Branch

