



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

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

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on May 7, 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 on May 15, 2014, therefore the Landlord is withdrawing the application for an Order of Possession as she has possession of the rental unit.

As well the Landlord indicated in the details of the dispute section on the application that she was seeking compensation for loss or damage, but did not check that box off on the application; I accept the Landlord's request for loss or damage compensation to be included in the claim.

Issues(s) to be Decided

1. Are there rent arrears or lost rental income and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or lost rental income 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 September 1, 2013 as a month to month tenancy. Rent was \$1,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$550.00 on July 26, 2013. The Landlord said the Tenant texted the Landlord on May 1, 2014 that the Tenant was moving out on May 15, 2014 and the Landlord could keep the Tenant's security deposit of \$550.00 as compensation for unpaid rent.

The Landlord said that the Tenants did not pay \$1,100.00 of rent for May, 2014 and did not give proper written notice to end the tenancy so the Tenant is responsible for lost of rental income for June 2014 in the amount of \$1,100.00. The Landlord said the unit is not rented.

As well the Landlord said the Tenant has unpaid utility bills which the Landlord estimated at \$37.00. The Landlord said she had the bills but the bills were not in the evidence package as she had just received them.

The Landlord continued to say the Tenant left the unit in poor condition the Landlord has additional damage claims. The Landlord said she had costs to mow the grass of \$45.00(receipt submitted), cleaning receipts of \$37.41, child care costs of \$40.00 hearing preparation costs in supplies and postal costs of \$136.21 and her own labour for cleaning of \$172.50 (11.5 hours at 415.00/hour). ,

Further the Landlord said she has requested to retain the Tenant's security deposit of \$550.00 as partial payment of these claims.

The Landlord also requested to recover the \$50.00 filing fee for his application.

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 periodic tenancy not earlier than at least one month prior to the date that rent is payable and it must be in writing. Therefore a notice to end a tenancy in any part of May, 2014 would end a tenancy for June 30, 2014.

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; therefore I find the Tenant is responsible for unpaid rent of \$1,100.00 for May, 2014 and for lost rental income for June, 2014 in the amount of \$1,100.00.

Unpaid utilities are treated as unpaid rent if the Landlord gives the Tenant a formal demand to pay the utility bills. I find the Landlord has not given the Tenant a formal demand to pay the utilities and the utilities are only an estimate of the amount owed therefore I dismiss the Landlord's utility cost claim of \$37.00 with leave to reapply.

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.

The Landlord has provided receipts for her claim of lawn mowing of \$45.00, cleaning supplies of \$36.41 and for her labour for cleaning of \$172.50; therefore I award these amounts to the Landlord.

With respect to the child care expense of \$40.00; I find this is not a cost that the Tenant was solely responsible for and therefore I dismiss this claim without leave to reapply.

Further costs that are associated with the preparation for the hearing are considered hearing costs not tenancy costs and as such are not eligible claims. Consequently, I dismiss the hearing preparation costs 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:

	Rent arrears:	\$ 1,100.00
	Lost rental income	\$ 1,100.00
	Mowing costs	\$ 45.00
	Cleaning supplies	\$ 36.41
	Landlord cleaning labour	\$ 172.50
	Recover filing fee	\$ 50.00
	Subtotal:	\$2,503.91
Less:	Security Deposit	\$ 550.00
	Subtotal:	\$ 550.00
	Balance Owing	\$ 1,953.91

Conclusion

A Monetary Order in the amount of \$1,953.91 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: June 23, 2014

Residential Tenancy Branch

