



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order 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 Landlord said he served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on April 9, 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 with all parties present.

Issues(s) to be Decided

1. Is there lost rental income and if so, how much?
2. Is the Landlord entitled to compensation for lost rental income and if so how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on November 17, 2013 as a fixed term tenancy with an expiry date of November 30, 2014. Rent was \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 and a pet deposit of \$150.00 at the start of the tenancy. The Landlord said the pet deposit was returned at the end of the tenancy. The Landlord continued to say the Tenants gave written notice on March 1, 2014 that the Tenants were moving out of the rental unit on March 31, 2014. The Tenant said they moved out of the unit on March 29, 2014.

The Landlord said the Tenants broke the fixed term tenancy agreement with the expiry date of November 30, 2014 and he was unable to rent the unit until June 1, 2014. As a result the Landlord said he has applied for lost rental income for the months of April and May, 2014 in the amount of \$1,250.00 for each month. The Landlord continued to say he advertised the unit daily on 2 internet sites and in the newspaper. As well the

Landlord said he showed the rental unit 4 or 5 times, but he was only able to rent the unit for June 1, 2014. The Landlord said he is requesting \$2,500.00 in lost rental income for 2 months.

As well the Landlord said he is requesting to retain the Tenants' security deposit as partial payment of the lost rental income and to recover the filing fee for this application.

The Tenant said she understands now that she broke the tenancy agreement, but she felt that she had to vacate the rental unit because there was a strong urine smell that have seated in the floor of one of the bedrooms in the unit. The Tenant continued to say that the Landlord did provide new carpet and she tried to clean and deodorize the room, but it did not correct the situation.

The Tenant also said the Landlord told her it was not a problem to end the tenancy early and he would try to get new tenants as soon as possible. The Tenant said she thought the Landlord had a new tenant shortly after she had moved out. The Tenant said she does not feel she is responsible for the Landlord's lost rental income.

The Landlord said he told the Tenant if he got a new tenant there would be no problem, but it took 2 months to find a tenant that was acceptable.

The Tenant said in closing that she was from out of province and she did not know how the rental system works in British Columbia and she did not think she should be responsible for the lost rental income.

The Landlord said in closing that the Tenant broke a fixed term tenancy with improper notice and he rented the unit as soon as he could; therefore the Landlord said the Tenants are responsible for his loss of rental income for April and May, 2014 in the amount of \$2,500.00

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 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 Tenants did not give the Landlord proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the lost rental income rent of \$1,250.00 for each month of April and May, 2014 in the total amount of \$2,500.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants 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 lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$ 2,500.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 2,550.00
Less:	Security Deposit	\$ 625.00
	Subtotal:	\$ 625.00
	Balance Owing	\$ 1,925.00

Conclusion

A Monetary Order in the amount of \$1,925.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenants: 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: July 29, 2014

Residential Tenancy Branch