



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 28, 2014. The Landlord said he submitted two Canada post tracking information slips indicating the Tenants had received and signed for the hearing packages. 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.

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. Are there damages to the unit and if so how much?
4. Is the Landlord entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and is the Landlord entitled to compensation?
6. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 1, 2013 as a fixed term tenancy with an expiry date of December 31, 2014. Rent was \$1,550.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$775.00 on November 15, 2013. The Landlord said the Tenant moved out of the rental unit on February 8, 2014 as a result of a 1 Month Notice to End Tenancy for Cause.

The Landlord said when he went to the rental unit on December 17, 2013 to collect unpaid rent of \$650.00 the Tenants told him the toilet was plugged. The Landlord said he unplugged the toilet, collected the rent and left. The Landlord continued to say that the toilet was plugged again in January when he received a phone call from a restoration company that was doing work in the unit below the Tenant's rental unit because of the toilet incident in the Tenants' unit on December 17, 2014. The Landlord said the plumber and the Strata manager both said the toilet was plugged because the Tenants used paper towel not toilet paper in the toilet. The Landlord submitted signed letters from both the plumber and the Strata manager indicating the plugged toilet was because of misuse of the toilet. The Strata manager letter says that he gave the Tenants some toilet paper to use and told them to clean up the water. The Landlord said the Tenants did not contact him about the toilet issues and he found out after the fact from the restoration company. The Landlord said it was wrong that the Tenants did not care enough to correct the situation or contact him to correct the situation before it became a large restoration repair. The Landlord said he has rented the unit out as of April 1, 2014 and there has been no issues with the toilet.

The Landlord said as a result of the plugged overflowing toilet he incurred the following clean up and repair costs:

Emergency clean up (December, 2013)	\$ 2,544.48
Emergency clean up (January, 2014)	\$ 4,124.24
Repairs after the clean up (January, 2014)	\$ 4,757.00
Locksmith charges (for emergency entrance)	\$ 118.13
Plumber	\$ 157.50
Landlord's cleaning costs 40 hours @\$10.00/hour	\$ 400.00
TOTAL	\$12,101.35

Further the Landlord said that the Tenants did not pay rent of \$1,550.00 for February, 2014 rent and he was unable to rent the unit to new tenants until April 1, 2014 so the Landlord is requesting loss of rental income for March, 2014 in the amount of \$1,550.00. The Landlord said the tenancy agreement was for a fixed term expiring December 31, 2014 and the Tenants breached the tenancy agreement.

The Landlord continued to say he is also requesting to recover the filing fee of \$100.00 that he has already paid. The Landlord said his total claim is \$15,301.35.

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.

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 unpaid rent for February, 2014 in the amount of \$1,550.00.

Section 45 of the Act says a tenant may end a fixed term tenancy **not earlier than the date specified in the tenancy agreement** (December 31, 2014) 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. Consequently the Tenants caused the end of the tenancy prior to the expiry date of the tenancy agreement by not paying the February, 2014 rent and by cause as indicated in the 1 Month Notice to End Tenancy for Cause dated January 15, 2014. As well the Landlord was unable to rent the unit in March, 2014 because of the repairs being done therefore; I find the Landlord has experienced a loss of rental income for the month of March, 2014 in the amount of \$1,550.00. I award the Landlord \$1,550.00 as compensation for loss rental income.

Further Section 32 of the Act says

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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 proven the loss exists and he has verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord's testimony that these damages and losses were caused by the Tenants and the costs were reasonable amounts to make repairs to the unit because of improper use of the toilet which caused the toilet to overflow and caused damage the rental unit and the unit below the rental unit. Consequently, I find the Landlord has established grounds to be awarded the costs as follows:

February, 2014 unpaid rent	\$1,550.00
March loss of rental income	\$1,550.00
Emergency clean up (December, 2013)	\$ 2,544.48
Emergency clean up (January, 2014)	\$ 4,124.24
Repairs after clean up (January, 2014)	\$ 4,757.00
Locksmith charges	\$ 118.13
Plumber	\$ 157.50
Landlord's cleaning costs	\$ 400.00

TOTAL	\$15,201.35
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As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the \$100.00 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:

	Damages	\$15,201.35
	Recover filing fee	\$ 100.00
	Subtotal:	\$15,301.35
Less:	Security Deposit	\$ 775.00
	Subtotal	\$ 775.00
	Balance Owning	\$ 14,426.35

Conclusion

A Monetary Order in the amount of \$14,426.35 has been issued to the Landlord. A copy of the Order 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: August 25, 2014

Residential Tenancy Branch

