



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JING LI NI
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

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

The Landlord's Agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail. Based on the evidence of the Landlord's Agent and the Tenant, 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 with both parties in attendance.

Issues(s) to be Decided

1. Are there losses or damages to the Landlord and if so is the Landlord entitled to compensation for those losses or damages?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Preliminary Matters

At the start of the conference call the Arbitrator and the parties reviewed the events that have taken place prior to this hearing. A brief summary of the events are as follows:

1. The Landlord issued a 10 Day Notice to End Tenancy for Unpaid rent dated December 10, 2012.
2. The Tenant filed an application to dispute the 10 Day Notice to End Tenancy for unpaid rent December 17, 2012.
3. The Tenants paid the rent on December 19, 2012 with a cheque postdated for December 20, 2012.
4. The Tenant thought he had cancelled the hearing scheduled for January 21, 2013, because he thought he had paid the rent as required.
5. The January 21, 2013 hearing was conducted and because the Tenant did not appear at the Hearing dated January 21, 2013 and because the Landlord

requested an Order of Possession the Landlord received an Order of Possession with an effective vacancy date of 2 days after service.

6. The Landlord service the Order of Possession on the Tenants.
7. The Tenants made an application to review the decision of January 21, 2013 on January 28, 2013 and a review decision was issued on January 31, 2013.
8. The review application by the Tenants was dismissed in the review decision dated January 31, 2013.
9. The Landlords received a Writ of Execution and hired a bailiff to evict the Tenants on February 4, 2013.
10. The Tenants filed an application for the return of double the security deposit and were successful in the hearing dated June 4, 2013. The Tenants received a monetary Order for \$4,050.00. As a result of this decision the Landlords current application to retain the Tenants security deposit is dismissed. The Landlord's Counsel said they have not paid the \$4,050.00, but the Landlord is not disputing the obligation.
11. The Tenant also filed for a Judicial Review of the January 21, 2013 decision and was unsuccessful in the court decision dated August 29, 2013.
12. The Landlord filed an application for compensation to recover the bailiff costs on March 19, 2013.
13. There were 5 adjournments of this case due to a number of different circumstances.
14. The Landlord's application for compensation to recover the bailiff costs was heard on February 2, 2015.

Background and Evidence

This tenancy started on June 20, 2012 as a fixed term tenancy with an expiry date of June 30, 2013. Rent was \$4,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$2,000.00 on June 20, 2012. The Tenant said they were evicted by the bailiff on February 4, 2013.

The Landlord's Counsel said this application is for the recovery of the costs of the bailiff to evict the Tenants from the rental unit when they did not move out of the rental unit in compliance with the Order of Possession dated January 21, 2013. The Landlord's Counsel continued to say the Landlord paid \$11,610.01 in bailiff fees and he provided the bailiff invoice for that amount as well as paid receipts for the invoice. The Landlord provided three paid receipts to the Bailiff Company; two for \$4,000.00 each and one for \$3,610.01. The Landlord's Counsel said the Landlord has followed the Law and the correct procedures in evicting the Tenants for not paying the rent on time. The Landlord's Counsel requested the Landlord be reimbursed for \$11,610.01 in bailiff costs and the filing fee of \$100.00.

The Tenant said this process has been wrong from the beginning, because he paid the unpaid rent on December 19, 2013 with a postdated cheque for December 20, 2013.

The Tenant said the Act says an arrangement to pay the rent is sufficient to show the rent is paid. The Tenant said he and his family should never have been evicted. The Tenant said the non-payment of rent started as a result of the Tenant with holding rent after requesting the Landlord to repair items in the rental unit. The Tenant said the Landlord did not make the repairs so he withheld the rent.

Further the Tenant said the Landlord did not meet her duty to mitigate or minimize the loss that she incurred. The Tenant said the bailiff's invoice is grossly high and the Landlord should be held partially responsible for this.

The Landlord's Counsel said the Landlord had no input or responsibility for the amounts on the bailiff's invoice. The Landlord's Counsel said there are three bailiff companies and the Landlord just pick one. The Landlord's Counsel continued to say the Tenant may have a dispute with the bailiff about the invoice amount but it is not with the Landlord. The Landlord's Counsel said the Landlord just paid the invoice given to her by the Bailiff Company.

The Tenant said in closing that this situation should not have happened in the first place and it has been a series of mistakes in the system that have cause great hardship on his family. The Tenant said he should not have to pay the bailiff's invoice.

The Landlord's Counsel said in closing that the Landlord has followed the law and the correct procedures in this process. As well the decisions have been verified by a review process with the RTB and by a Court Judicial Review. Both reviews upheld the January 21, 2013 decision awarding the Landlord an Order of Possession.

The Landlord's Counsel said the Landlord had no choice but to pay the bailiff's invoice when she received it and now the Landlord is requesting to recover these costs that were directly associated with evicting the Tenants.

Analysis

During the conference call and hearing the Tenant made a number of references to previous decisions and the process that has occurred in this situation. I do not have the power or jurisdiction to review or change any of the previous decisions. This hearing is restricted to the Landlord's application for monetary compensation to recover the costs of the bailiff to evict the Tenants.

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's Counsel has proven the loss existed with the paid bailiff's invoice and Counsel has verified the loss by providing paid receipts from the Bailiff Company for the claim that the Landlord has made. I accept the Landlord's testimony and evidence that these damages and losses (the bailiff costs) were caused by the Tenants when they withheld rent, resulting in an Order of Possession and the eviction. The action of not paying rent in full on time is a violation of the Act. As well I accept the Landlord's position that she followed court procedures when picking a bailiff company and she had no input to the costs that the bailiff incurred for the eviction process. As well, I find the Landlord did mitigate her loss by using the court process for the eviction. Consequently, I find the Landlord has established grounds to be awarded the costs for the bailiff's invoice in the amount of \$11,610.01. As well, still the Landlord has been successful in this matter I award the Landlord the filing fee of \$100.00. I award the Landlord a total of \$11,710.01 for loss or damage.

Conclusion

A Monetary Order in the amount of \$11,710.01 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: February 02, 2015

Residential Tenancy Branch

