



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, 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 August 5, 2014. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Tenants requested an adjournment of the hearing. The Tenants said the Landlord sent them an incomplete hearing package. The Tenants continued to say they did not receive all of the Landlords' evidence so they contacted the Residential Tenancy Branch and requested the Landlords' full evidence package. The Tenants said they received the Landlord's full evidence package on February 12, 2015. The Landlord said he served the Tenants with the same full package as he sent to the Residential Tenancy Branch. The Landlord said he sent the hearing package by registered mail and provided tracking information and a receipt.

The Arbitrator reviewed the all the evidence with the parties and determined the Tenants had all the Landlords' evidence as at February 12, 2015. This was enough time for the Tenants to review the evidence and the Tenants had enough time to make a response to the Landlords' evidence to the Residential Tenancy Branch on February 12, 2015. The Arbitrator declined the Tenants request for an adjournment and the hearing continued as scheduled.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on January 1, 2013 as a month to month tenancy. Rent was \$1,850.00 and then the parties agreed the rent was reduced to \$1,650.00 around December 2014. The Tenant paid a security deposit of \$925.00 on January 1, 2013.

The Landlords said they applied for an Order of Possession and a Monetary Order for \$1,650.00 by way of the Direct Request process. The Landlord said they were successful and they serviced both orders on the Tenants. The Landlord continued to say the Tenants did not move out; so the Landlord hired a Bailiff company to remove the Tenants. The Landlords said the Tenants were removed from the rental unit on July 24, 2015.

As a result of the eviction and the costs incurred doing the eviction the Landlord said they have applied for the following costs which they have paid.

1. Rent for July, 2014 in the amount of \$1,650.00. The Landlord had included the June, 2014 rent of \$1,650.00 but they realized at the hearing they have a monetary order for the June, 2014 rent in the amount of \$1,650.00 from the Direct Request hearing dated July 4, 2014.
2. Bailiff costs – the Landlord said they paid a deposit to the Bailiff of \$2,500.00 and they received \$843.42 back. This made their claim \$1,656.58 in Bailiff costs. (receipt included in the evidence package).
3. Carpet cleaning in the amount of \$262.50 (receipt included in the evidence package)
4. Dump fees for garbage removal \$17.00 (receipt included in the evidence package).
5. Changing locks on the rental unit \$336.00 (receipt included in the evidence package).
6. Court costs in the amount of \$120.00 (receipt included in the evidence package).
7. Landlord's time for cleaning and for the process to evict the Tenants in the amount of 4 hours at \$35.00 per hour = \$140.00
8. Filing fee in the amount of \$100.00.
9. As well the Landlord requested to retain the Tenants' security deposit of \$925.00 as partial payment of these costs.

The Landlord said their total claim is \$4,282.08.

The Tenant said that the Landlord served them with a 2 Month Notice to End Tenancy in May, 2014 which they did not completely understand and so they thought they did not have to pay the June, 2014 rent as per the 2 Month Notice to End Tenancy. The Tenants continued to say later they realized they should have paid the June, 2014 rent,

but by that time the Landlord had filed a Direct Request application and the Landlord had received an Order of Possession and a Monetary Order.

The Tenants continued to say they dispute the Landlords' claims for carpet cleaning as they had a quote for \$99.95 for carpet cleaning. They also believe the Bailiff removed all their belongings including the garbage from the rental unit so the Landlord did not haul their garbage to the dump and as a result the Landlord should not get the dump fee of \$17.00. The Tenants also dispute the key charge of \$336.00 as they returned all keys and remotes. Further the Tenants said the Landlord works at night so he did not lose wages to file the eviction applications and orders. The Tenants said they have some concerns about the Landlords' application and so they have filed their own application for damages which will be heard in August, 2015.

The Tenants said in closing that they tried to work with the Landlord but issues came up and they were not able to resolve them. The Tenants said the Bailiffs removed all the garbage so the Landlord should not receive the dump fee of \$17.00.

The Landlord said in closing that the Tenants did leave garbage at the unit and in the yard and he did clean it up and haul it to the dump. The Landlord said he was a good landlord as shown by him agreeing to reduce the rent by \$200.00 to help the Tenants.

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 July, 2015 in the amount of \$1,650.00. I also find the previous Monetary Order dated July 4, 2014 in the amount of \$1,650.00 is payment for the June, 2014 unpaid rent

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 of the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlords proved that losses exist and they verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlords' testimony that these damages and losses were caused by the Tenants and the costs were reasonable amounts to recover the costs. Consequently, I find the Landlords' have established grounds to be awarded the costs for Bailiff fees of \$1,656.58, carpet cleaning of \$262.50, dump fees of \$17.00, court fees of \$120.00, Landlord's time for 4 hours at \$35.00 per hour in the amount of \$140.00 and the filing fee of \$100.00.

I dismiss the Landlords' claim for \$336.00 for re-keying the locks as this is the responsibility of the Landlord at the end of every tenancy.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant 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 payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,650.00
	Bailiff fees	\$ 1,656.58
	Carpet cleaning	\$ 262.50
	Dump fee	\$ 17.00
	Court fees	\$ 120.00
	Landlord's time	\$ 140.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$3,946.08
Less:	Security Deposit	\$ 925.00
	Subtotal:	\$ 925.00
	Balance Owing	\$ 3,021.08

Conclusion

A Monetary Order in the amount of \$3,021.08 has been issued to the Landlords. 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 23, 2015

Residential Tenancy Branch

