



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, OPB, MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 24, 2015. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' 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 Landlords said the Tenant moved out of the unit on March 2, 2015. Consequently they do not require an Order of Possession and therefore the Landlord said they are withdrawing their request for an Order of Possession.

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. Is there a loss or damage to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for loss or damage and if so how much?
5. Are the Landlords entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 26, 2014 as a month to month tenancy. Rent is \$825.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$412.50 on June 26, 2014.

The Landlord said that the Tenant did not pay \$825.00 of rent for January, 2015 when it was due and as a result, on January 31, 2015 the Landlords' Property Manager personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated January 31, 2015 to the Tenant. The Landlords said the Tenant also has unpaid rent for February and March in the amount of \$825.00 for each month and the Landlord is requesting the April, 2015 rent of \$825.00 as lost rental income because the Tenant caused damage to the unit that made the rental unit not rentable. The Landlord said he is going to file another application for damages as all of the work has not been completed. As a result the Landlord said he has not sent in the evidence with this application to show the damage to the unit. The Landlords agreed their damage claim can be handled in a future application not in this application due to the lack of evidence submitted.

The Landlord also sought to recover a \$25.00 late rent payment fee for January, 2015, February, 2015 and March, 2015.

Further the Landlord also indicated that he has submitted a claim for \$950.00 for his time and efforts to prepare the application and for costs that he incurred for the Property Manager to perform her duties. The Landlord submitted a typed note indicating the amount of their claim including the \$950.00 claim, but there is no supporting evidence to prove the amount of the loss or to verify the loss with receipts.

The Landlords also requested that the Tenant paid two pet deposits of \$200.00 each for two dogs in the unit. The Landlord said his Property Manager was responsible to collect these deposits but it was not done.

The Landlords' monetary claim is \$5,575.00 on the list of claims and \$5,000.00 on the Landlords' application. The Landlords said their monetary claim is \$5,000.00.

The Landlord also requested to recover the \$50.00 filing fee for this proceeding.

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 term tenancy not earlier one month prior to the date that rent is payable or with the agreement of the Landlord and it must be in writing.

The Tenant did not give the Landlords 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 the rent of \$825.00 for each month of January, 2015, February, 2015 and March, 2015 for a total amount of unpaid rent of \$2,475.00.

I further find that the Landlord is entitled to recover a loss of rental income to April 15, 2015, in the amount of \$412.50 ($\825.00×15 of 30 days of April). The Landlords have an obligation to mitigate their damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible.

I further find that the Landlord is entitled to recover the late charge of \$25.00 for January, February and March, 2015 in the amount of \$25.00 for each month for a total of \$75.00.

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 Landlords have not provided receipts for their damage claims and the Landlords said they are going to pursue these claims after the work has been done. Consequently, I dismiss the Landlords' damage claims with leave to reapply.

Further the Landlords' claims for his time and costs to make this application are dismissed without leave to reapply as these costs are not eligible claims as they are for the hearing process and are outside the tenancy.

With regard to the Landlord's request to have the Tenant pay two pet deposits of \$200.00 each it is the Landlords' responsibility to collect any deposits from the Tenant and if the Landlords do not exercise their rights the opportunity to collect the deposits is extinguished. I dismiss without leave to reapply the Landlords' claim for \$400.00 in uncollected pet deposits.

As the Landlords have been partially successful in this matter, they are 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 rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 2,475.00
	Lost rental income	\$ 412.50
	Late rent fees	\$ 75.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$3,012.50
Less:	Security Deposit	\$ 412.50
	Subtotal:	\$ 412.50
	Balance Owing	\$ 2,600.00

Conclusion

A Monetary Order in the amount of \$2,600.00 has been issued to the Landlords. 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: March 23, 2015

Residential Tenancy Branch

