



Dispute Resolution Services

Page: 1

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 Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 27, 2014. The Landlord said the registered mail package was returned to him as the Tenants gave him an incorrect address on the Security Deposit Refund Form. The Landlord said he had no idea where the Tenants are living. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' 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. 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 September 1, 2014 as a fixed term tenancy with an expiry date of August 31, 2015. Rent was \$2,150.00 per month payable in advance of the 1st day of each month. The Tenant paid both a security deposit of \$1,100.00 and a \$1,100.00 pet deposit on September 1, 2014. The Landlord said the Tenants gave him notice on October 21, 2014 that they were moving out of the unit on November 1, 2014. The Landlord said the Tenants actually moved out at the end of November, 2014.

The Landlord continued to say that he started advertising the unit in mid-November, 2014 on 2 websites and by posters in the town. The Landlord said he had many people

come to look at the unit, but he was unable to rent the unit until February 1, 2015. As a result the Landlord is requesting compensation for lost rental income for December, 2014 and January, 2015 in the amount of \$2,150.00 for each month totally \$4,300.00.

As well the Landlord requested to retain the Tenants' security and pet deposits as partial payment of the lost rental income and he requested to recover the filing fee of \$100.00.

To support the Landlord's claims the landlord submitted the tenancy agreement, copies of the advertisements, the Tenants' address, registered mail receipt and tracking information and a rent payment cheque from the Tenants for November, 2014.

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 Landlords 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 rent of \$2,150.00 for each month of December, 2014 and January, 2015 for a total amount of rent owing of \$4,300.00.

As the Landlord has been successful in this matter, he 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 and pet deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears/lost rental income:	\$ 4,300.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$4,400.00
Less:	Security Deposit	\$ 1,100.00
	Pet Deposit	\$ 1,100.00
	Subtotal:	\$ 2,200.00
	Balance Owing	\$ 2,200.00

Conclusion

A Monetary Order in the amount of \$2,200.00 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: July 08, 2015

Residential Tenancy Branch

