



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ODIN ZAVIER & MARIJANA ZAVIER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: MNR, MND, MNDC, MNSD, FF
TENANT: RP

Introduction

This matter dealt with an application by both the Landlord and the Tenant. The Landlord applied for an Order of Possession, 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 Tenant's security deposit and to recover the filing fee for this proceeding. The Tenant applied for repairs to the unit, site or property.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on October 14, 2015. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act.

The Tenant did not attend the hearing and the Landlord said he had not been served the Tenant's application. As the Tenant did not attend the hearing to support her application I dismiss the Tenant's application without leave to reapply.

Further the Landlord said that he has possession of the rental unit so he is withdrawing the request for an order of possession on this application.

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 Tenant's security deposit?

Background and Evidence

This tenancy started on March 1, 2015 as a fixed term tenancy with an expiry date of May 31, 2015 and then was renewed for another fixed term ending on September 30, 2015. Rent was \$825.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$412.50 at the start of the tenancy.

The Landlord said that the Tenant did not pay rent of \$825.00 for September, 2015. In addition to unpaid rent the Landlord said he is claiming for wall repair and painting costs of \$1,602.87 as the Tenant smoke in the unit in violation of the tenancy agreement and there was considerable damage to the walls at the end of the tenancy. The Landlord said the unit was freshly painted in 2014 prior to this tenancy. The Landlord continued to say there are 38 photographs and a move in condition inspection report to support the Landlord's claim about wall damage and smoke damage. Further the Landlord said he is claiming \$760.00 for cleaning and repairs to the bifold doors and blinds. The Landlord said the work has been completed and he has submitted invoices for the work done. The Landlord continued to say he has also included an estimate for the replacement of the bathtub, but this work has not been completed at this time.

Further the Landlord said he included \$240.00 for his time and materials for preparation for the hearing but he is withdrawing this claim.

The Landlord also said he is requesting to recover the filing fee of \$50.00 if he is successful in his application. The Landlord said his total claim is for \$3,237.87.

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 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 unpaid rent for September, 2015 in the amount of \$825.00.

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 proved the loss existed and he verified the losses by providing invoices and photographs for the claims that the Landlord has made. I accept the Landlord testimony that these damages and losses were caused by the Tenant and the costs were reasonable amounts to make repairs to the unit because of smoking in the unit

and damage that was more than normal wear and tear. Consequently, I find the Landlord has established grounds to be awarded the costs for repairing and painting the walls of \$1,602.87, for cleaning the unit and repairing doors and blinds of \$760.00. As the work on the bathtub has not been completed, I dismiss this claim with leave to reapply.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant 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 Tenant's security deposit in payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 825.00
	Painting	\$ 1,602.87
	Cleaning and repairs	\$ 760.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$3,237.87
Less:	Security Deposit	\$ 412.50
	Subtotal:	\$ 412.50
	Balance Owing	\$ 2,825.37

Conclusion

A Monetary Order in the amount of \$2,825.37 has been issued to the Landlord. 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: November 17, 2015

Residential Tenancy Branch

