



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAO SUN & FENG XU
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 17, 2015. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlord's 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 or utilities arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities and if so how much?
3. Is there damage and if so how much?
4. Is the Landlord entitled to compensation for damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on June 27, 2013 as a fixed term tenancy with an expiry date of July 1, 2014 and then continued on a month to month basis. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 at the start of the tenancy. The Landlord said the Tenants moved out of the rental unit in February, 2015 as a result of a 10 Day Notice for unpaid rent or utilities. The Landlord said he thought a move in and a move out condition inspection reports were completed, but he did not submit the reports in the evidence package and the Landlord was unable to produce the reports. The Landlord said the tenancy ended about 10 months ago and his family works overseas so it was difficult to get all the evidence together.

The Landlord said that the Tenants did not pay \$5,600.00 of rent for October, November, December 2014 and January, 2015 when it was due so the Landlord issued a 10 Day Notice to End Tenancy dated January 25, 2015, which is in the Landlord's evidence package. As well the Landlord said the Tenants have unpaid utility bills in the amount of \$200.00, but the Landlord did not have any invoices.

The Landlord continued to say that they are also claiming cleaning costs of \$300.00 and repairs to the rental unit of in the amount of \$5,420.92. The Landlord said he did not have a receipt for the cleaning. The Landlord continued to say the repairs have been completed and the Landlord submitted 2 hand written note as a receipt for the repair work and a note outlining the cost estimate of the repairs to be done. The Landlord said the repairs have been completed. As well the Landlord submitted photographs of the apartment that shows damage to the wall and doors.

The Landlord continued to say that because his family works overseas it is difficult to get all the information and evidence put together to support their monetary claim. The Landlord said he has tried to follow the rules but it has been difficult. The Landlord said they are requesting \$11,670.82 in compensation for unpaid rent and damage to the rental unit.

The Landlord also requested to recover the \$100.00 filing fee for his application and their mailing costs of \$50.92.

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 rent of \$1,400.00 for each month of October, November, December, 2014 and January, 2015 in the amount of \$5,600.00.

With respect to the Landlords' utility claim a landlord must provide a formal demand to pay the utility bills and he must provide invoices in the evidence. I find the Landlord has not provided the utility invoices therefore the amount of \$200.00 for unpaid utility bills is unproven. I dismiss the Landlords' claim for unpaid utilities in the amount of \$200.00.

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 Landlord has not provided receipts for his claim of cleaning in the amount of \$300.00 therefore the loss is not proven or verified. I dismiss the Landlords' claim of \$300.00 for cleaning due to a lack of evidence.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said he is unable to provide a move in or move out condition inspection report for this tenancy the Landlord is unable to establish the condition of the rental unit at the start or end of the tenancy. Without these reports it is not possible to measure the amount of damage if any caused by the Tenants during the tenancy. I find that the Landlord has not established proof that shows the amount of damaged the Tenants did to the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply due to lack of evidence.

Further the cost of mailing the application and evidence to participants in a hearing are not costs that are eligible under the Act; there I dismiss the Landlord's request for mailing costs in the amount of \$50.92.

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

	Rent arrears:	\$ 5,600.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$5,700.00
Less:	Security Deposit	\$ 700.00	
	Subtotal:		\$ 700.00
	Balance Owing		\$5,000.00

Conclusion

A Monetary Order in the amount of \$5,000.00 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: December 07, 2015

Residential Tenancy Branch

