



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for 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 Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on November 26, 2015. The Landlord provided tracking information and a Canada Post receipt as evidence to support the service of the documents. Based on the evidence of the Landlord, 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 with both parties in attendance.

Issues(s) to be Decided

1. Is there unpaid rent 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 Tenants' security and pet deposits?

Background and Evidence

This tenancy started on February 1, 2015 as a month to month tenancy. Rent was \$1,000.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$500.00 and a pet deposit of \$200.00 both on January 31, 2015. The Landlord said the Tenants gave their notice to end the tenancy on October 22, 2015 and moved out of the rental unit on November 1, 2015. The Landlord said this was not proper notice to end a tenancy. A move in condition inspections report was completed on January 31, 2015 and a move out condition inspection report was completed on October 31, 2015 with the Tenants in attendance and the Tenants agreed

with the condition of the unit but and would not agree to any deductions from their security or pet deposits.

The Landlord said that the Tenants moved out without proper notice so the Landlord was unable to rent the unit for November, 2015. The Landlord said she is requesting the November, 2015 rent as she was only able to rent the unit on December 1, 2015. The Landlord said she lost the November, 2015 rent of \$1,000.00 due to the improper notice to end tenancy that the Tenants gave her on October 22, 2015.

Further the Landlord said Tenants damaged the unit. The Landlord is claiming for 2 broken windows in the amount of \$110.12, \$154.75 for repairs to the walls and doors and the Landlord is requesting \$130.00 for gas to drive to the rental unit to make the repairs. The Landlord said she provided the condition inspection reports as evidence to support her claims. The Landlord said her total claim is for \$1,394.87 plus the filing fee of \$50.00.

The Tenants said they gave the Landlord notice that they were moving out in early October by text messaging and then in writing on October 22, 2015. The Tenants said they do not believe they are responsible for the November, 2015 rent as they did not live in the rental unit in November, 2015.

Further the Tenants said the 2 windows did get broken by the wind slamming the doors but the Landlord was aware of the broken window and the Landlord said they were going to fix the windows but never did. The Tenant said he was surprised to see the Landlord claiming for the broken windows now.

The Tenants continued to say that the doors in the rental unit are old and any repairs to the doors are not their fault or responsibility. The doors were faulty and would not close though out the tenancy.

In closing the Tenants said the Landlords were very pleased with how the rental unit was left at the end of the tenancy and they are surprised that the Landlords are making damage claims now.

The Landlords in closing that there is lost rental income of \$1,000.00 for November, 2015 and damages to the windows, walls and doors. As well the Landlord had gas expenses to get to the property to repair it.

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 than one month prior to the normal rent payment date. The notice must be in writing at least one month prior to the date that rent is payable or with the written agreement of the Landlord.

As the Tenants gave written notice to end the tenancy on October 22, 2015 and moved out November 1, 2015; I find the Tenants did not give the Landlord 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 for November, 2015 in of \$1,000.00.

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.

As both parties agree the windows were broken during the tenancy, I find the Tenants are responsible for the cost to repair the windows in the amount of \$110.12.

With regard to the Landlords claims for repairs to the walls and doors, I have reviewed the condition inspection report and find both the wall repairs and the door repairs are noted on the report. Consequently I find for the Landlord and award \$154.75 for the repairs.

The Landlord proved the loss existed and she verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord testimony that these damages and losses were caused by the Tenants and the costs were reasonable amounts to make repairs to the unit. Consequently, I find the Landlord has established grounds to be awarded the costs for repairing the 2 windows, wall repair and the door repairs in the a total amount of \$264.87.

With regards to the Landlord's claim for gas to drive to the rental unit I find it is part of a Landlords responsibilities to check on a rental unit and repair it when needed therefore I find this is a normal cost for a landlord and is not the responsibility of the Tenants. I dismiss the Landlords claim of \$130.00 for gas.

As the Landlord has been partially successful in this matter, the Landlord is 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 and pet deposits in payment of the unpaid rent. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid Rent:	\$ 1,000.00
	Repairs	\$ 264.87
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,314.87
Less:	Security Deposit	\$ 500.00
	Pet Deposit	\$ 200.00
	Subtotal:	\$ 700.00
	Balance Owing	\$ 614.87

Conclusion

A Monetary Order in the amount of \$614.87 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: June 21, 2016

Residential Tenancy Branch