



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAINT'S PRESERVES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The male tenant and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to an Order of Possession for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on November 01, 2012 for a fixed term of one year, thereafter continuing as a month to month tenancy. The tenancy ended on

August 08, 2016. Rent for this unit was \$1,450.00 per month although the landlord reduced the rent for some of the winter months to \$1,400.00. Rent was due on the 1st of each month. The tenants paid a security deposit of \$725.00 in October, 2012.

The landlord testified that in September 2013, the tenants got into some financial problems and could not pay all their rent. The tenants asked the landlord if she could apply their security deposit towards the rent; however, the landlord refused to do this. The tenants only paid partial rent for that month and the following months as shown below:

Rent	Month due	Amount paid	Amount owed	Balance
\$1,450.00	September, 2013	\$725.00	\$725.00	\$725.00
\$1,400.00	December, 2015	\$700.00	\$700.00	\$1,425.00
\$1,400.00	January, 2016	\$1,300.00	\$100.00	\$1,525.00
\$1,400.00	February, 2016	\$1,500.00	(-\$100.00)	\$1,425.00
\$1,450.00	March, 2016	\$1,500.00	(-\$50.00)	\$1,375.00
\$1,450.00	April, 2016	\$825.00	\$625.00	\$2,000.00
\$1,450.00	May, 2016	\$1,400.00	\$50.00	\$2,050.00
\$1,450.00	June, 2016	\$550.00	\$900.00	\$2,950.00
\$1,450.00	July, 2016	\$1,200.00	\$250.00	\$3,200.00

The landlord seeks a Monetary Order to recover the unpaid rent of \$3,200.00. The landlord testified that she continues to hold the security deposit in trust for the tenants as she did not allow them to take it off their rent.

The landlord testified that at the end of the tenancy the landlord was surprised at the filthy condition the unit was left in as the tenants had always been so clean. The entire unit had to be cleaned including the cleanup of kitty litter and food off the floors. The male tenant had said he would come back to clean but after two weeks the landlords could not wait any longer as the unit had to be re-rented so the landlord and one other person spent at least two days or 40 hours between them cleaning at \$10.00 per hour.

The landlord only seeks to recover half the cost for this work and therefore seeks to recover \$200.00 from the tenants. The landlord has provided a time line spent cleaning in documentary evidence.

The landlord testified that the tenants did not return the keys to the rental unit. The tenant informed the landlord that the keys were in storage. The landlord had to have the locks changed at a cost of \$44.00 and has provided a receipt in documentary evidence.

The landlord testified that the tenants left a lot of items behind. Nothing had very much value so the landlord paid a neighbour \$100.00 to take everything to the dump. This included four mattresses, a dresser, an old TV, bags of clothes, a kitty litter box and litter and other old items.

The landlord testified that she had claimed to recover \$100.00 for a missing patio table but withdraws this section of her claim.

The landlord seeks an Order to be permitted to apply the security deposit to her monetary claim. The landlord also seeks to recover the filing fee of \$100.00 from the tenants.

The tenant did not dispute the landlord's claim for unpaid rent and testified that he agreed with the landlord's rent ledger.

The tenant does not dispute that they did not leave the rental unit clean, but testified that he had told the landlord he was working and that he would come to clean after work at 3.00 p.m. but when the tenant called the landlord he was told they had already done the cleaning.

The tenant agreed that they did not return the keys to the rental unit and testified that he could not access the keys as they had been put in storage.

The tenant agreed that they did leave belongings in the unit and does not dispute the landlord's claim to remove these to the dump.

The tenant does not dispute the landlord's application to keep their security deposit.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenant does not dispute the landlord's claim for unpaid rent. I have considered the landlord's calculations again and find these figures are accurate concerning the unpaid rent for September, 2013, for December, 2015 and for January to July, 2016 as shown above. I accept that the landlord did not allow the tenants to apply their security deposit during the tenancy to the unpaid rent. A security deposit is an amount held in trust by the landlord until the tenancy is legally ended and cannot be used towards rent payments during the tenancy. I therefore find in favor of the landlord's claim to recover the amount of **\$3,200.00**.

With regard to the landlord's claim for cleaning (\$200.00), replacement locks (\$44.00) and the removal of the tenants' belongings (\$100.00); the tenant did not dispute any part of the landlord's claim that the unit was not left reasonable clean at the end of the tenancy. Although the tenant testified that he was going to come back to clean; a landlord does not have to give the tenants extra time to clean and the rental unit should have been left clean at the end of the tenancy. The tenant also agreed that the keys were not returned or that the landlord had to remove the tenants' belongings to the dump. I therefore find in favor of the landlord's claim for the amount of **\$344.00**

I order the landlord to retain the security deposit of **\$725.00** in partial satisfaction of this application, pursuant to s. 38(4)(b) of the *Act*.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent	\$3,200.00
Cleaning, locks and removal of belongings	\$344.00
Filing fee	\$100.00
Less security deposit	(-\$725.00)
Total amount due to the landlord	\$2,919.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,919.00**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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 16, 2017

Residential Tenancy Branch