



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, 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; a Monetary Order for damage to the unit, site or property; 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; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this month to month tenancy started on July 15, 2014 and ended on September 30, 2016. Rent for this unit was \$1,100.00 per month due on the first of each month. The tenants paid a security deposit of \$550.00 on July 01, 2014.

The landlord testified that the tenants failed to pay rent on September 01, 2016. The landlord contacted the male tenant by text message on September 07, 2016 and asked about the late rent. The tenant agreed by text message to pay it the following Friday and also informed the landlord in the same text message that they would be vacating the rental unit at the end of September.

The landlord testified that the tenants did not pay the rent for September as promised and further text messages were exchanged between them concerning the payment of rent. Eventually in November, 2016, after the tenant, had vacated the landlord contacted the tenant's father and the tenants paid \$400.00 towards the outstanding rent on November 30, 2017. The landlord testified that there remains an outstanding balance for September, 2016 rent for \$700.00.

The landlord testified that as the tenants did not give proper written notice to end the tenancy the landlord was unable to re-rent the unit for October, 2016. Immediately on receiving the text message from the tenants on September 07, 2016 the landlord advertised the unit on an internet site. The landlord referred to the text message exchange in which the landlord has written that he has someone to come and look at the rental unit; however the unit could not be re-rented until November, 01, 2016. The landlord seeks to recover a loss of rental income for October, 2016 of \$1,100.00.

The landlord testified that there was some damage left in the unit; the hinges on a kitchen cupboard door were damaged and a washroom vanity mirror was left broken. The landlord referred to his documentary evidence showing photos of the damage and the costs to repair this damage in the form of a receipt for \$157.91. The landlord seeks

an Order to be permitted to keep this amount from the security deposit. This leaves a balance of \$392.09 of the security deposit. The landlord seeks an Order to keep this balance to offset against the unpaid rent.

The landlord also seeks to recover the filing fee of \$100.00 from the tenants.

The tenant testified that he agrees the landlord may keep \$157.91 for the damage to the hinges and the vanity mirror from the security deposit.

The tenant agreed that he did not pay all the rent for September, 2016. The tenant testified that he did pay \$400.00 and told the landlord by text message that he could keep the security deposit of \$550 to put towards the rent. The tenant testified that the balance of the rent of \$150.00 should not be awarded back to the landlord as the tenants had to spend money on repairs in the basement and on the washer/dryer.

The tenant testified that with regard to late notice to end his tenancy, He had informed the landlord verbally at the end of August that his parents were coming into town and so they had a mutual agreement to end the tenancy at the end of September in writing. The tenant testified that the landlord rented the unit out for October 01, 2016 as he saw new tenants moving in when he was moving out. The tenant agreed he does not have a copy of a mutual agreement to end the tenancy

The landlord testified that this is untrue the only agreement they had in writing was the tenancy agreement. No mutual agreement to end tenancy was ever given to the landlord and nothing was signed by either parties' to end this tenancy at the end of September. The landlord testified that the new tenants were not found until after the tenants vacated and they did not move in until November 01, 2016.

The landlord questioned the credibility of the tenant's testimony and referred to the text messages provided in documentary evidence between the landlord and this tenant

concerning the text message about vacating the unit and the number of promises made to pay September's rent which were not fulfilled.

Analysis

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

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

26. 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 has provided insufficient evidence to show he had a right to deduct any rent for repairs or that he had paid for emergency repairs in accordance with s. 33 of the *Act*. A party may not apply the security deposit to unpaid rent as it is held in trust by the landlord until the end of the tenancy and then must be dealt with in accordance with s. 38 of the *Act*.

Consequently I am satisfied that there are rent arrears for September, 2016 of **\$700.00** and the landlord is entitled to recover this from the tenant.

With regard to the landlord's application to recover a loss of rent for October, 2016; I refer the parties to s.45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and
(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant testified that they had a mutual agreement to end the tenancy at the end of September. The landlord disputed this and testified that the tenant only informed the landlord by text message on September 07, 2016 that they would be vacating the rental unit at the end of September. The landlord has provided a copy of the text message confirming this in documentary evidence. The tenant has not provided a mutual agreement to end the tenancy. I find the landlord's evidence more credible than that of the tenants concerning the notice to end tenancy. I also find the landlord's evidence more credible concerning the landlord's attempts to re-rent the unit to mitigate the loss and that the rental unit was not re-rented until November 01, 2016. Consequently, as the tenants provided improper notice to end the tenancy in breach of s. 45(1) of the *Act* I find the landlord is entitled to recover a loss of rental income for October, 2016 of **\$1,100.00**.

With regard to the landlord's application concerning damage to the kitchen cupboard hinges and the vanity mirror; at the hearing the tenant agreed the landlord could keep the cost for this damage of **\$157.91** from the security deposit. I therefore Order the landlord to do so pursuant to s. 38(4)9b) of the *Act*. This leaves a balance of **\$392.09** of the security deposit. I Order the landlord to keep this amount and I have offset this against the unpaid rent pursuant to s. 38(4)(b) of the *Act*.

As the landlord's application has been successful, the landlord is also 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 for September, 2016	\$700.00
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Loss of rent for October, 2016	\$1,100.00
Damage to the unit	\$157.91
Filing fee	\$100.0
Less security deposit	(-\$550.00)
Total amount due to the landlord	\$1,507.91

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 **\$1,507.91**. The Order must be served on the respondent. Should the respondent 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: May 31, 2017

Residential Tenancy Branch