

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for loss of rental income, for damage to the unit site or property, 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 application.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on December 16, 2016. The Landlord said the hearing package was returned unclaimed. Further the Landlord said the package was mailed to the forwarding address the Tenant gave to the Landlord. 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 and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Are there rent arrears or lost rental income and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security and pet deposits?

Background and Evidence

This tenancy started on July 1, 2015 as a fixed term tenancy with an expiry date of June 30, 2016. Rent was \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$500.00 and a pet deposit of \$500.00 at the start of the tenancy. The Landlord said the Tenant gave notice to move out on December 13, 2015 and moved out of the rental unit on January 31, 2016 which was 5 month prior to the end of the fixed term tenancy. The Landlord told the Tenant that she

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would be responsible for the rent until the Landlord could find a new tenant or until June 30, 2016. The Landlord said condition inspection reports were completed and the Tenant signed that she agreed to the Landlord retaining the security and pet deposits as well as the rent up to June 30, 2016 if the Landlord could not find a new tenant earlier.

The Landlord said that the Tenant ended the tenancy before the fixed term date therefore the Tenant is responsible for the rent until June 30, 2016 or until the Landlord got a new tenant. The Landlord said they started advertising to rent the unit in mid December, 2015 as soon as they received the Tenant's notice to move out. The Landlord said they put a new tenant into the unit April 1, 2016; therefore the Landlord is requesting lost rental income for February and March, 2016 in the amount of \$1,000.00 for each month for a total of \$2,000.00.

As well the Landlord said they incurred \$100.00 in cleaning fees and there is a clause in the tenancy agreement allowing the Landlord to collect \$300.00 in liquidated damages for costs to re-rent the unit if the Tenant moves out before the fixed term of the tenancy agreement. The Landlord submitted the paid receipt for the cleaning and the tenancy agreement with the Tenant's initial beside the liquidated damages clause.

The Landlord said their total claim is for \$2,400.00 and if successful the Landlord is requesting to recover the filing fee of \$100.00.

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 fixed term tenancy **not earlier than the date specified in the tenancy agreement** and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and 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 rent of \$1,000.00 for February, 2016 and \$1,000.00 for March, 2016 in the amount of \$2,000.00.

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.

The Landlord has provided a receipt for the claim of cleaning in the amount of \$100.00 and the tenancy agreement which has the clause in the addendum that states a \$300.00 fee will be charge if the Tenant breaks the tenancy agreement before the end of the fixed term of the tenancy. The Landlord said this is not a penalty but covers their time and expenses to advertise and show the property to potential new tenants. I accept the Landlord's evidence and testimony and award the Landlord the \$100.00 for cleaning and the \$300.00 for liquidated damages for the Tenant breaking the tenancy agreement.

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

	Lost Rental income:	\$ 2,000.00
	Cleaning	\$ 100.00
	Liquidated damages	\$ 300.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$2,500.00
Less:	Security Deposit	\$ 500.00
	Pet Deposit	\$ 500.00
	Subtotal:	\$ 1,000.00
	Balance Owing	\$ 1,500.00

Conclusion

A Monetary Order in the amount of \$1,500.00 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: June 14, 2017.

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