



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SPERA (LYNN CREEK) GP MANAGEMENT LTD.
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 damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery by a process server on May 22, 2018. 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 and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there damage to the unit, site or property 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 December 16, 2016 and was renewed on December 16, 2017 as a fixed term tenancy with an expiry date of December 31, 2018. Rent is \$800.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$400.00 on December 16, 2016.

The Landlord said the Tenants are living in the rental unit and they have not paid the rent for March, April, May, June and July 2018 in a total amount of \$4,000.00. The

Landlord said he has not applied for an Order of Possession as the Tenant has a large amount of belonging both in the house and in the yard and he is hoping the Tenant will clean the unit up when he moves out. The Landlord said the Tenant has indicated he wants to move out of the unit but the Tenant has not told the Landlord when this may happen. The Landlord understands that he can apply for an Order of Possession, but he has chosen not to at this time.

Further the Landlord said he has applied for \$2,000.00 to clean up the yard, but the Landlord has not done the work yet so he does not know exactly what it will cost.

The Landlord also requested to recover the \$100.00 filing fee for his application.

Analysis

Section 26 of the Act 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 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 \$800.00 per month for March, April, May, June and July, 2018 in the amount of \$4,000.00. I award \$4,000.00 to the Landlord for unpaid rent.

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 said he has not done the yard clean up as of yet so he does not know the costs that he will incur. I find the Landlord has not proven an actual loss or verified the loss with paid receipts; therefore I dismiss the Landlord's damage claim of \$2,000.00 with leave to reapply.

Further as the tenancy is continuing I dismiss the Landlord's claim to retain the Tenant's security deposit with leave to reapply when the tenancy ends.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 4,000.00	
Recover filing fee	\$ 100.00	
Subtotal:		\$4,100.00
Balance Owing		\$ 4,100.00

Conclusion

A Monetary Order in the amount of \$4,100.00 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: July 17, 2018

Residential Tenancy Branch