



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent or utilities, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations and tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord's Agent said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 8, 2018 and then again by registered mail to a new address and to his mother. The Landlord's agent said they also applied for substitute service but that application was not heard. The Landlord provided postal receipts and tracking information in support of the service of documents. Based on the evidence of the Landlord's Agent, 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 or utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent or utilities 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 Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2017 as a month to month tenancy. Rent was \$1,800.00 per month for the four tenants in the unit. Rent was due on the first day of each month. The Tenant paid his share of the security deposit of \$225.00 at the start of the tenancy. The Landlord's agent said the Landlord made a previous application and received an Order of Possession and a monetary order for the unpaid rent. The Landlord's agent continued to say that this application is for unpaid utilities in the amount of \$748.03, damage to the unit site or property of \$393.73 and for loss or damages of \$684.45. The Landlord's agent said the Landlord's total claim is \$1,826.21.

Further the Landlord's agent said all the receipts are for ¼ of the total bills as there were four tenants at the unit and this application is for this Tenants share. The utility receipts submitted are for propane, hydro and water and sewer. The agent said all these receipts are paid and are submitted to support the Landlord's claim for unpaid utilities. The propane invoices are in the amount of \$363.42 less a propane credit of \$180.00. The water and sewer invoice is for \$177.89. There are four hydro receipts totally \$411.72.

The balance of the Landlords claim is for damage to the unit and costs that the Landlord incurred. The Agent said the Landlord is requesting to recover these expenses. The Landlords agent said her father is very detailed and he submitted receipts or invoices for all the claims. The Landlord's agent said the Landlord is requesting \$1,078.18 for damage to the unit site or property and for loss or damage to the Landlord. The Landlord's agent said the Landlord also was told at the last arbitration that he had to credit the Tenant \$25.00 for the filing fee received at that hearing.

The Landlord's agent said the Landlord's total net claim is \$1,826.21.

Analysis

Section 26 says a tenant must pay rent or utilities 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. Further utilities are treated as rent if after 30 days a formal demand has been made. The evidence submitted by the Landlord includes formal demands for the utilities; therefore the unpaid utilities are to be treated as unpaid 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 unpaid utilities in the amount of \$748.03.

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's agent proved the losses exist and she verified the losses by providing receipts for the claims that the Landlord has made. I accept the Landlord's Agent's testimony that these damages and losses were caused by the Tenant and the costs were reasonable amounts to make repairs, replace the items or pay the cost of the Landlord's labor.

The claims the Landlord is not entitled to are the costs of postage for the hearing as preparation for the hearing is not considered part of the tenancy but part of the hearing process. Therefore, I deduct \$120.98 of postage costs from the Landlord's claim.

In addition the Landlord has claimed \$16.80 for advertising of the rental unit. All advertising costs to rent a unit are the responsibility of the Landlord. I dismiss this claim as well.

Further the Landlord has requested to recover the cost of a hotel for 4 nights when the Tenant was give alternative accommodation because of a potential mold issue in the rental unit. As this was an agreement between the Landlord and Tenant at the time of the mold issue whether or not the mold issue was correct, I find that I am reluctant to undo an agreement made between the parties. Consequently I dismiss the Landlord's claim for \$497.20 for alternative accommodation.

Consequently, I find the Landlord's Agent has established grounds to be awarded the following:

Unpaid utilities	\$ 748.03	
Damage and losses	\$ 443.20	
Total		\$1,191.23

As the Landlord has been successful in this matter, the Landlord 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 in payment of the utility arrears. The Landlord will receive a monetary order for the balance owing as following:

	Utility arrears:	\$ 748.03
	Damage and loss	\$ 443.20
	Recover filing fee	\$ 100.00
	Subtotal:	\$1,291.23
Less:	Security Deposit	\$ 225.00
	Subtotal:	\$ 225.00
	Balance Owing	\$ 1,066.23

Conclusion

A Monetary Order in the amount of \$1,066.23 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: September 24, 2018

Residential Tenancy Branch