



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Preliminary matter

The Landlord made a previous application for substitute service of documents by email which was approved on March 26, 2019.

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 email on March 28, 2019. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by 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 and if so how much?
4. Is the Landlord entitled to compensation for the 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 September 1, 2017 as a fixed term tenancy with an expiry date of August 31, 2019. Rent was \$2,300.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,150.00 at the start of the tenancy. The Landlord said the Tenant moved out of the rental unit on March 22, 2019 without written notice to the Landlord.

The Landlord said that the Tenant did not pay \$90.00 of rent for October, 2017 and the Tenant has unpaid rent of \$2,300.00 for each month of December 2018, February 2019 and March 2019. The Landlord said the Tenant has a total of \$6,990.00 of unpaid rent.

Further the Landlord said the Tenant broke a door lock and a table in the unit which he estimates will cost \$100.00 each to fix. The Landlord said he has not fixed the lock or table as he is out of the country at the present time.

The Landlord also requested to recover the \$100.00 filing fee for his application and to retain the Tenant's security deposit as partial payment of the unpaid rent.

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 unpaid rent of \$6,990.00.

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 not repaired the door lock or the table therefore; I find a loss has not been proven or verified at this time. I dismiss the Landlord's claims for the repair of the door lock and table with leave to reapply.

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

	Rent arrears:	\$ 6,990.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$7,090.00
Less:	Security Deposit	\$ 1,150.00
	Subtotal:	\$ 1,150.00
	Balance Owing	\$ 5,940.00

Conclusion

A Monetary Order in the amount of \$5,940.00 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: May 21, 2019

Residential Tenancy Branch