



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on January 23, 2011. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

The Landlord said the Tenants' moved out of the rental unit on January 30, 2011, therefore she has possession of the unit and she said she would withdraw the request for an Order of Possession.

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 the Landlord entitled to compensation for loss or damage under the Act, regulations or tenancy agreement and if so how much?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 15, 2010 as a fixed term tenancy with an expiry date of April 30, 2011. Rent is \$1,395.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$697.50 prior to November 1, 2010.

The Landlord said that the Tenant did not pay \$1,395.00 of rent for January, 2011 when it was due and as a result, on January 12, 2011 she mailed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail dated January 12, 2011. The Landlord continued to say she is also requesting the February, 2011 rent of \$1,395.00 as the Tenants' left the tenancy before the end of the fixed term, they did not give her proper notice of moving out and she was not able to rent the unit for February, 2011 as

the unit needed repairs and cleaning. The Landlord said the unit is not rented as of today.

The Landlord further indicated that the Tenant did not give her a forwarding address and she does not know where the Tenants' are.

Analysis

Section 26 of the Act says that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has the right under the Act to deduct all or a portion of the rent.

I find from the Landlord's testimony that the Tenants' have unpaid rent for January, 2011 of \$1,395.00 and the Tenants do not have the right under the Act to withhold any part of the rent therefore; I find that the Landlord is entitled to recover unpaid rent for January, 2011, in the amount of \$1,395.00. I further find that the Landlord was not able to rent the unit out for February, 2011 as the Tenants did not give proper notice for moving out, they moved out on January 30, 2011 before the end of their fixed tenancy agreement of April 30, 2011 and the unit needed cleaning and repairs before it could be rented therefore; I find the Landlord is entitled to recover a loss of rental income for February, 2011 in the amount of \$1,395.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$1,395.00	
	Loss of Rental Income:	\$1,395.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$2,840.00
Less:	Security Deposit	\$ 697.50	
	Subtotal:		\$ 697.50
	Balance Owing		\$2,142.50

Conclusion

A Monetary Order in the amount of \$2,142.50 has been issued to the Landlord. A copy of the Orders 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*.

Residential Tenancy Branch