



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF

Introduction

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

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery mail on February 6, 2013. The Tenant's representative A.L. said he received the Landlord's application and hearing package at the Tenant's rental unit and gave the package to the Tenant. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence, but with a representative for the Tenant in attendance.

At the start of the Conference call the Tenant's representative requested an adjournment because the Tenant had a family emergency. As the Tenant is represented and these proceeding can be conducted in the absence of the respondent; I dismiss the Tenant's request for an adjournment.

The Landlord said the Tenant moved out on February 28, 2013, therefore the Landlord does not require an Order of Possession as they have possession of the rental unit.

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 a loss or damage and is the Landlord entitled to compensation for that loss or damage.
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on July 1, 2012 as a fixed term tenancy with an expiry date of June 30, 2013. Rent was \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 on July 1, 2012. The Landlord said the Tenant moved out of the rental unit on February 28, 2013. The Landlord said a move in condition inspection report was completed, but to date no move out condition inspection report has been done and the Tenant has not given the Landlord her forwarding address in writing.

The Landlord said that the Tenant did not pay \$1,250.00 of rent for January, 2013 when the rent was due, but has paid the January, 2012 rent now. The Landlord continued to say the Tenant has not paid the February, 2013 rent of \$1,250.00 and has been late with the rent a number of times since the start of the tenancy. The Landlord said she issued a 10 Day Notice to End Tenancy for unpaid rent on January 2, 2013 and a 1 Month Notice to End Tenancy on January 11, 2013 for repeatedly late rent payments. The Landlord provided three 10 Day Notices to End Tenancy for unpaid rent dated July 4, 2012, September 10, 2012 and January 2, 2013 as well as a rental ledger that supports the Landlord's claim that the Tenant has been repeatedly late with rent payments.

As well the Landlord said the Tenant has left the rental unit and has not filled the oil tank with \$300.00 of oil as indicated in the tenancy agreement. The Landlord said she is making a claim for \$300.00 for the cost of the oil. The Landlord said she has not paid for the oil as of the hearing date so she is unable to verify her loss with a paid receipt.

The Tenant's Representative said he does not know the Tenant's business, but he is attending the Hearing for the Tenant to ask for an adjournment. The Tenant's Representative declined to comment on whether the rent was paid.

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.

I accept the Landlord's evident and testimony that the Tenant has been repeatedly late with rent payments and has unpaid rent for February, 2013 in the amount of \$1,250.00. Consequently, I award the Landlord \$1,250.00 for the February, 2013 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.

As the Landlord is unable to verify the loss by providing a receipt for the \$300.00 fuel oil claim, I find the Landlord has not established grounds to prove this claim and as a result I dismiss the \$300.00 fuel oil claim with leave to reapply.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords 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:	\$ 1,250.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 1,300.00
Less:	Security Deposit	\$ 625.00
	Subtotal:	\$ 625.00
	Balance Owing	\$ 675.00

Conclusion

A Monetary Order in the amount of \$675.00 has been issued to the Landlords. 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*.

Dated: March 04, 2013

Residential Tenancy Branch

