



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

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

The Landlord's Agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on May 7, 2014 and then again in by regular mail and in person on June 22, 2014. Based on the evidence of the Landlord's Agent, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Are the Landlords entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and are the Landlords entitled to compensation?
6. Are the Landlords entitled to keep the Tenants' security and pet deposits?

Background and Evidence

This tenancy started on January 1, 2013 as a fixed term tenancy for one year and then was renewed on November 8, 2013 with another fixed term tenancy starting on January 1, 2014 with an expiry date of June 30, 2014. Rent was \$1,625.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$797.50 and a pet deposit of \$797.50 on December 18, 2012. The Landlord's agent said the Tenants moved out of the rental unit at the end of January, 2014. The Landlord's agent said the female Tenant gave her verbal notice to end the tenancy at the end of December, 2013,

but no written notice was given and no written forwarding address was given to the Landlord. The Landlord's agent said a move in condition inspection report was completed on January 2, 2013 and a move out condition inspection report was completed in the Tenants absence on January 31, 2014. The Landlord's agent said she gave the Tenants two opportunities to participate in the move out report.

The Landlord said that the Tenants did not pay rent of \$623.29 for January, 2014. As well the Landlord's agent said the Tenants did not pay the water bills of \$315.13 and \$473.42 and the forties bill of \$1,600.56 which the Landlord is claiming in their application.

In addition to the unpaid rent the Landlords said they are claiming lost rental income for February, March and April, 2014 in the amount of \$1,625.00 for each of the three months as they were unable to rent the unit until May 1, 2014. The Landlord's agent said advertised the unit on the internet and showed the unit 6 times starting on January 7, 2014 and up to March 17, 2014. The new tenant moved into the rental unit on May 1, 2014. The Owner of the rental unit said he reduced the rent to \$1,300.00 plus some services to be provided by the new tenants in order to rent the unit. The Landlord's agent said they are claiming lost rental income of 3 months at \$1,625.00 for each month totaling \$4,875.00.

Further the Landlord's agent said they are claiming cleaning costs of \$262.50 which they have included a paid receipt for, \$253.07 for hauling costs to remove the debris that the Tenants left in the unit and which the Landlord's agent said she only submitted one receipt for in the amount of \$125.50.

In addition the Landlord's agent said they are claiming the \$500.00 liquidated damage fee that is in clause 26 of the tenancy agreement. The Landlord's agent said this is to cover the costs of advertising and showing the unit when the Tenants broke the tenancy agreement early.

The Landlord's agent also requested to recover the \$100.00 filing fee for this proceeding.

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 Tenants did not give the Landlords proper notice to end the tenancy and they breached the tenancy agreement; the Tenants do not have the right under the Act to withhold part or all of the rent; I find the Tenants are responsible for the rent of \$623.29 for January, 2014.

I further find that the Landlords are entitled to recover a loss of rental income for February, March and April, 2014 in the amount of \$4,875.00 (\$1,625.00 X 3 months). The Landlords have an obligation to mitigate their damages under s. 7(2) of the Act by re-renting the rental unit as soon as possible. I accept the Landlords' testimony that they have mitigated their rental loss by advertising and showing the rental unit as well as reducing the rent to get the unit rented as soon as possible.

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 loss existed and she verified the losses by providing receipts for the claims that the Landlords have made. I accept the Landlord's Agent's testimony that these damages and losses were caused by the Tenants and the costs were reasonable amounts to make repairs to the unit. Consequently, I find the Landlord's Agent has established grounds to be awarded the costs for liquidated damages of \$500.00, cleaning costs of \$262.50 and hauling costs of \$125.50.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security and pet deposits in payment of the rent arrears and lost rental income. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 623.29	
	Lost rental income	\$ 4,875.00	
	Water utilities	\$ 788.55	
	Gas Utility	\$ 1,600.56	
	Cleaning	\$ 262.50	
	Hauling	\$ 125.50	
	Liquidated Damages	\$ 500.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$8,875.54
Less:	Security Deposit	\$ 797.50	
	Pet Deposit	\$ 797.50	
	Subtotal:		\$ 1,595.00
	Balance Owing		\$ 7,280.54

Conclusion

A Monetary Order in the amount of \$7,280.54 has been issued to the Landlords. A copy of the Order must be served on the Tenants: 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 08, 2014

Residential Tenancy Branch

