



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, O, FF

Introduction

This matter dealt with an application by the Landlord for 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, to recover the filing fee for this proceeding and for other considerations.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 6, 2017. Based on the evidence of the Landlords, I find that the Tenant were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

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 if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?
6. What other considerations are there?

Background and Evidence

This tenancy started on April 1, 2015 as a month to month tenancy. Rent was \$775.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$390.00 on April 1, 2015. The Landlord said the Tenants moved out of the rental unit on January 5, 2017 without proper written notice to the Landlord. The Landlord said a move in condition inspection was completed and signed on April 1,

2015 and a move out inspection was completed without the Tenant. The Tenant was given two opportunities to attend the inspection on January 1 and January 7, 2017.

The Landlord said that the Tenants did not pay \$775.00 of rent for January, 2017. The Landlord said he issued a 10 Day Notice to End Tenancy dated January 2, 2017, which is in the Landlord's hearing package.

The Landlord continued to say he changed the lock on the door and submitted receipts for a new lock of \$19.00 and for a new key of \$3.35. As well the Landlord said the Tenant did not clean the unit so they spent \$35.21 on cleaning supplies and paid a cleaner \$480.00 to clean the rental unit. As well the Landlord said they paid \$117.00 for carpet cleaning but the estimate they sent in the evidence package is for \$111.79 and that is what they are applying for. The Landlord continued to say that their total claim is for \$1,964.35 which includes the filing fee of \$100.00.

The Tenant said he told the Landlords in November, 2016 he was moving out January 15, 2017 but the Tenant did not give the Landlords written notice of his move out date. Further the Tenant said the new tenant moved into the rental unit around January 15, 2017 and she did the cleaning that the Landlords are talking about. The Tenant said he cleaned the unit until the new tenant took over the cleaning. She told the Tenant the Landlords said if she cleaned the unit she did not have to pay rent for January, 2017. The Tenant said the Landlords are not telling the truth.

The Landlords said it is correct that the new tenant moved in around January 15, 2017 and she was given free rent for January, 2017 for cleaning the unit, but they told the Tenant they would adjust their claim when they got a new tenant. It should be noted the Landlords' application is dated February 1, 2017 and the new tenant moved in around January 15, 2017. The Landlord did not adjust their claim when they explained their application at the start of the hearing. The Landlord said he is telling the truth they just made a mistake.

The Tenant continued to say the male Landlord was hostile to the Tenant and so the Tenant did not participate in the move out inspection because he did not want a confrontation with the male Landlord.

The male Landlord said he was not confrontation and the Tenant would not accept his advice to inform himself about the Residential Tenancy Act.

In closing the Tenant said he gave verbal notice to end the tenancy, he cleaned the unit and the new tenant moved in around January 15, 2017 so he doesn't think he is responsible for cleaning or the rent for the last half of the January, 2017.

The Landlord said in closing that they made a mistake by not adjusting their claim to show the unit was rented around January 15, 2017. Still the unit was not clean and they

gave up rental income to get the unit clean. Further they have not been pay for the rent for January 1 to 15, 2017 and they request to recover it now.

Analysis

I have reviewed the evidence submitted by the Landlord and have noted the Tenant did not submit any written evidence. Further I have taken note that the Landlords' claims were adjusted as the Tenant gave testimony about the new tenant moving in around January 15, 2017 and that the new tenant finished the cleaning in the unit. I have some concerns that the Landlords did not adjust their claim to ½ a months rent in the application as they had a new tenant in the unit around January 15, 2017 and their application was made February 1, 2017.

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.

The Tenant did not give the Landlords 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 rent of \$387.50 from January 1, 2017 to January 15, 2017 as a new tenant moved in January 15, 2017.

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.

First the Landlord has claimed for a new lock and key for the rental unit in the amount of \$22.35. It is the Landlords responsibility to change the locks each time a tenancy changes to ensure the new tenant has adequate security. Therefore I dismiss the Landlords' claim of \$22.35 for a new lock and key as this is a landlord expense.

Secondly the Landlord has not provided corroborative evidence that the new tenant was paid \$480.00 to clean the rental unit or that the Landlord actually paid to have the carpets cleaned. The Tenant said he did some cleaning until the new tenant took over and I have reviewed the Landlords' photographic evidence and I find the evidence does not support a cleaning bill of \$480.00 or a carpet cleaning cost of \$111.79. I accept that the new tenant did some cleaning but the amount is not proven. Given that the actual amount of the loss for cleaning and carpet cleaning is not proven and there is no corroborative evidence to support these claims; I dismiss the Landlord's claim for cleaning in the amount of \$480.00 and for carpet cleaning in the amount of \$111.79.

With regards to the cleaning supplies I accept the new tenant has done some cleaning therefore I accept the cleaning supplies expense of \$35.21 and I award this amount to the Landlord.

As the Landlords have only been partially successful in this matter, I order the Landlords to bear the cost of the application fee in the amount of \$100.00 that has already been paid. I order the Landlord pursuant to s. 38 and 67 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears and damages. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 387.50
	Cleaning supplies	\$ 35.21
	Subtotal:	\$ 422.71
Less:	Security Deposit	\$ 390.00
	Subtotal:	\$ 390.00
	Balance Owing	\$ 32.71

Conclusion

A Monetary Order in the amount of \$32.71 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: July 17, 2017

Residential Tenancy Branch