



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, MNR, MND and FF

Introduction

This application was brought by the landlord seeking a Monetary Order for unpaid rent, damage to the rental unit and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

At the commencement of the hearing, the landlord advised that he had written off a portion of the unpaid rent and damages and amended his application to request only authorization to retain the security deposit in set off against one-half month's unpaid rent..

Issue(s) to be Decided

This matter requires a decision on whether the landlord has proven that the tenant's owed one-half month's rent and that he is entitled to retain the security deposit in set off.

Background and Evidence

This tenancy ran from November 1, 2007 to March 11, 2008. Rent was \$1,680 per month and the landlord holds a security deposit of \$840 paid on October 11, 2007.

During the hearing, the landlord gave evidence that he had served the tenants with a Notice to End Tenancy for unpaid rent on March 2, 2009. While his submitted evidence was only a typed notice to that effect, he stated that he had served notice on the prescribed form as required by section 46(2) of the *Act*. The tenants stated that they had not received notice on the prescribed form and, in the absence of a copy of the form, I must prefer the tenants' version on the question.

The landlord further makes claim that the tenants did not pay the rent for March 2008. The tenants stated that they did, in fact, pay the rent in cash on March 2, 2008 but that the landlord had provided no receipt. The parties disagreed over whether it was the landlord's custom to issue receipts, but the landlord was unable to provide copies of previous receipts to prove that was his practice.

The female tenant's brother gave evidence that he witnessed the tenants pay the rent to the landlord in person and said he had no doubt as to the amount as he had loaned them the money.

When asked why they would have paid the rent on March 2, 2008, then moved out on March 11, 2009, the tenants stated that they had a two-month old baby at the time, the rental unit was cold and drafty and they had an immediate opportunity of much more suitable accommodation.

The male tenant's father supported this contention and said he had urged the tenants to move sooner as he was concerned about the effect of the drafty rental unit on his new grandchild.

The tenants had a number of concerns about the rental unit, but had had some problem resolving them, partly due to the fact that the landlord had been out of the country for some two months.

The tenants also contested the authenticity of a condition inspection report submitted by the landlord and it did not bear the signature of the tenants.

Analysis

The burden of proof on a monetary claim falls to the party making the claim. There was no evidence submitted by the landlord to demonstrate that it is his consistent practice to issue receipts when rent is paid. In addition, given the corroborating sworn evidence by the female tenant's brother that he had loaned them the rent money to avoid eviction for them and the new baby, I find that the landlord has not met the burden of proof that the rent was not paid. Therefore, the application is dismissed without leave to reapply.

Conclusion

I find, and hereby order, that the landlord must return the security deposit with interest calculated follows:

Security deposit	\$840.00
Interest (October 11, 2007 to date)	13.33
TOTAL	\$853.33

Thus, the tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, in the amount of \$853.33 for service on the landlord.

April 16, 2009.

Dispute Resolution Officer