



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the file prior to the Hearing. Both parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Landlord’s application for a monetary order for unpaid rent for January, 2009, to apply the security deposit towards rental arrears, and to recover the filing fee from the Tenant.

Background and Evidence

Facts on which the parties agree

- The Tenant paid the Landlord a deposit in the amount of \$1,200.00 on December 22, 2008.
- There was no written Tenancy Agreement.
- There was no move-in inspection done.
- The Tenant did not take possession of the rental unit on January 1, 2009.
- The Tenant advised the Landlord on December 24, 2008, that she did not want to rent the rental unit.

Landlord’s testimony and evidence

The Landlord testified that he mailed the Application for Dispute Resolution and Notice of Hearing package to the Tenant by registered mail on January 21, 2009, to the address the Tenant provided as a forwarding address.

The Landlord testified that the Tenant paid a security deposit in the amount of \$1,200.00 on December 22, 2008 and agreed to rent the rental unit for a period of two months commencing January 1, 2009, for a monthly rent of \$2,400.00.

The Landlord testified that he did not have time to prepare a written Tenancy Agreement and relies on their verbal agreement.

The Landlord testified that he attempted to re-rent the rental unit by posting an advertisement on December 27, 2008, on two web sites: UVIC Housing and Craig's List. The Landlord testified that it was too expensive to advertise in the local newspaper. The Landlord testified that after 2 weeks there was no interest in the rental unit, so he dropped the monthly rent from \$2,400.00 including utilities, to \$2,100.00 plus utilities. The Landlord testified that he was unable to re-rent the rental unit for the month of January, 2009. The Landlord requested a monetary order for unpaid rent for January, 2009, in the amount of \$2,400.00 and to apply the security deposit towards partial satisfaction of the monetary order.

Tenant's testimony and evidence

The Tenant testified that she gave the Landlord a deposit of \$1,200.00 on December 22, 2008, on the understanding that the Landlord would provide her a written tenancy agreement for her to sign the next day. The Tenant testified that she did not receive the written tenancy agreement on December 23, 2008. The Tenant testified that she waited until 7:30 p.m., December 23, and then telephoned the Landlord to enquire about the tenancy agreement. The Tenant testified that the Landlord stated he would send the tenancy agreement via e-mail by 10:00 p.m., December 23, 2008. The Tenant testified that she did not receive the tenancy agreement by the morning of December 24, 2008,

so she checked her banking account and discovered that the Landlord had cashed her cheque on December 23, 2008.

The Tenant testified that she tried to telephone the Landlord a few times on December 24, 2008, but was not successful. The Tenant testified that she e-mailed the Landlord, stating that she was no longer interested in renting the rental unit as she had lost trust in the Landlord and was anxious to secure rental accommodation for her up-coming practicum. The Tenant testified that the Landlord called back and spoke to the Tenant's father. The Tenant stated that the Landlord told her father that he would return the Tenant's deposit.

The Tenant testified that the Landlord posted an advertisement for the rental property on the University of Victoria's off-campus-housing board on December 25, 2009.

The Tenant testified that the Landlord sent her an e-mail on December 27, 2009, advising that he would not return the deposit. The Tenant testified that on January 7, 2009, she mailed the Landlord written notice demanding return of the deposit, via registered mail.

Analysis

The Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

On December 22, 2008, the Landlord and Tenant agreed that the Tenant would rent the rental unit for a period of two months. Rent was to be \$2,400.00 per month and the Tenant provided a deposit in the amount of \$1,200.00. I find that there was an oral tenancy agreement in place on December 22, 2008. The Tenant did not move into the rental unit on January 1, 2009, pursuant to the tenancy agreement. The Tenant did not

pay rent to the Landlord for the month of January, 2009, and therefore the Landlord is entitled to loss of rent for January, 2009, in the amount of \$2,400.00.

Section 72(2) of the Act states:

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant.

Pursuant to Section 72(2)(b) of the Act, the Landlord may retain the security deposit in partial satisfaction of his claim. I therefore make a monetary order in favour of the Landlord in the amount of \$1,200.00, calculated as follows:

January, 2009, rent:	\$2,400.00
Recovery of filing fee	\$50.00
Less security deposit and interest of \$.49	<u><\$1,200.49></u>
TOTAL	\$1,249.51
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Conclusion

I grant the Landlord a monetary order for \$1,249.51 against the Tenant. This order must be served on the Tenant and may be filed in the Provincial Court of British

Columbia (Small Claims) and enforced as an order of that Court.

April 3, 2009
