



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision and Reasons

Dispute Codes:

FF,

MNR,

MNSD

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 provided by the parties prior to the Hearing. Both gave affirmed evidence at the Hearing and the Hearing proceeded on its merits.

Introduction

This is the Landlord’s application for a Monetary Order for unpaid rent; to keep the security deposit paid by the Tenants; and to recover the filing fee from the Tenant for the cost of the application.

Background and Evidence

The Landlord testified that he mailed the Tenant the Notice of Hearing package on March 9, 2009, at 9:15 a.m., by registered mail to the Tenant’s forwarding address. The Landlord provided the receipt and tracking number for the registered mail documents.

The month-to-month tenancy started on September 15, 2008, when the Tenant and the Landlord entered into a tenancy agreement. The Tenant paid a security deposit to the Landlord in the amount of \$850.00 on September 15, 2008. Monthly rent was \$1,700.00 per month, due on the first day of the month.

Landlord's testimony

The Landlord testified that the Tenant gave notice on October 16, 2008, that he was moving out of the rental unit on October 31, 2008. The Tenant did not pay rent for the month of November, 2008. The Landlord applied for a monetary order for unpaid rent because the Tenant did not give sufficient notice.

The Landlord testified that the Tenant did not pay utilities, as was agreed between the parties. The Landlord applied for a monetary order for unpaid utilities in the amount of \$102.00 for BC Hydro and \$224.00 for Terasen Gas.

The Landlord applied to retain the security deposit in partial satisfaction of his claim.

Tenant's testimony

The Tenant testified that on September 30, 2008, the Landlord gave him a notice to vacate the rental unit by the end of November, 2008, but did not give a reason for the notice. The Tenant testified that when the Landlord gave him the notice, the Landlord remarked that he was selling the property.

The Tenant testified that he gave the Landlord written notice, dated October 16, 2008, that he was vacating the rental unit on October 31, 2008, because he had bought a house and the possession date was October 28, 2008. The Tenant testified that the Landlord prevailed upon him to stay until the end of November, but that the Tenant did not agree to do so.

The Tenant testified that he sent a letter to the Landlord on January 12, 2009, requesting return of his security deposit, but got no response. The Tenant did not file an application for dispute resolution with respect to return of the security deposit.

The Tenant agreed that he owed the Landlord for utilities in the amount of \$226.64, and supplied a calculation to support this monetary amount.

Analysis

Based on the testimony of both parties, I find that the Landlord gave the Tenant notice that he was ending the tenancy because he intended to sell the rental property. In issuing the Notice, the Landlord did not comply with Section 49(5) or Section 49(7) of the Act. The Landlord did not provide proof that he had a sale agreement with a purchase prior to issuing the Notice, or that all conditions on which the sale depended were satisfied, or that the purchaser had asked the Landlord, in writing, to give the Tenant notice to end the tenancy. Furthermore, the Notice was not in the approved prescribed form.

The proper course of action would have been to issue the Notice, in approved form, and in compliance with Section 49(5), and to provide the Tenant with compensation under Section 51 of the Act.

The Tenant acted on the Landlord's Notice and moved out of the rental unit on October 31, 2009.

The Landlord improperly ended the tenancy, and should not benefit from this violation of the Act. Therefore, the Landlord's application for a monetary order for unpaid rent is dismissed without leave to re-apply.

The Landlord has applied to keep the security deposit in partial satisfaction of his monetary claim. The Landlord's monetary claim for unpaid rent is dismissed and therefore, the Landlord is not entitled to retain the security deposit paid by the Tenant.

The Landlord provided copies of the BC Hydro bill and the Terasen Gas bill. However, the copies of the bills indicate a different balance owing than that which the Landlord is claiming, and cover a period beyond the period of the tenancy. The Landlord did not provide a calculation to explain how he came up with the figures he claimed. Therefore, the Landlord did not prove his right to the amount claimed. The Tenant provided a calculation for the amount he believes he owes the Landlord for utilities. Based on the testimony and evidence provided by the parties, I find that the Tenant owes the Landlord the amount of \$68.72 for BC Hydro and \$157.92 for Terasen Gas, for a total of \$226.64.

The Landlord has been partially successful in his application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenant. I have set off the amount the Tenant owes the Landlord against the security deposit, pursuant to Section 72(2)(b) of the Act.

The Tenant is entitled to a monetary order as follows:

Return of security deposit and accrued interest:	\$853.76
Less amount owing to the Landlord for utilities and recovery of the filing fee:	<u><\$276.50></u>
BALANCE OWING TO TENANT:	\$577.26
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Conclusion

Pursuant to Section 67 of the Act, I hereby grant the Tenant a Monetary Order in the amount of \$577.26 against the Landlord. This Order must be served on the Landlord

and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

June 11, 2009
