



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, MNSD, CNR, MT, AAT

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, a monetary Order for unpaid rent and to retain all or part of the security deposit.

This hearing was also scheduled in response to an Application for Dispute Resolution submitted by the agent for the tenant, in which the tenant is requesting more time to cancel a notice to end tenancy for unpaid rent, to cancel a notice to end tenancy, a monetary order for damage or loss and to allow access to or from the unit for the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Applications for Dispute Resolution were reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Preliminary Matter(s)

The individual named as the tenant applicant in this cross-application hearing attended as agent for the tenant.

For the purposes of the tenant's Application for Dispute Resolution, the agent testified that she was a tenant but that she did not sign a tenancy agreement. The landlord testified that the agent has never been a signatory to a tenancy agreement and is not a tenant. The landlord supplied a copy of the last known signed tenancy agreement, dated September 11, 2004, which includes only the male tenant's signature.

Residential Tenancy Branch Policy states that where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. Therefore, I have determined that the female agent was not a tenant, but an occupant.

The agent has applied for dispute resolution, as a tenant; however, I have accepted that the tenant application was made on behalf of the male tenant and have amended the

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application for dispute resolution to include the male tenant only, with the female as agent.

It was determined at the start of the hearing that the tenant has vacated and has no desire to return to the rental unit; therefore the portion of the tenant's application requesting more time to cancel a notice to end tenancy, to cancel a notice to end tenancy and access to the rental unit are withdrawn. The landlord's application for an Order of possession was also withdrawn.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$700.00 for unpaid July, 2009 rent?

Is the landlord entitled to retain the deposit in partial satisfaction of unpaid rent owed?

Is the tenant entitled to compensation in the sum of \$10,000.00 for the loss of personal effects?

Background and Evidence

The tenancy with the male tenant commenced in January 2004 and a second tenancy agreement was signed on September 11, 2004. Rent was \$650.00 per month and a deposit of \$325.00 was paid in September 2004.

During the hearing the parties agreed that on July 2, 2009 the male tenant was personally served a 10 Day Notice to End Tenancy for Unpaid rent of \$700.00 owed on July 1, 2009. The agent testified that the male tenant is competent but does experience some memory problems.

The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant files an Application for Dispute Resolution within five days. The agent stated that she only became aware of the Notice on July 14, at which point she made an application for dispute resolution. The agent testified that the male tenant always paid the rent by cash and was given receipts for payment. The agent stated she could not locate the July 2009 rent receipt but asserted that the rent was paid.

The landlord testified that she writes the receipts for the 47 units in advance and that the tenant's receipt for July remains in the receipt book and was not fully completed as payment was not provided.

The agent testified that the male tenant was forced from his home and that the locks were changed and his belongings illegally seized by the landlord. The landlord submitted a statement signed by several people who indicate they witnessed the male

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return his keys to the landlord on August 8, 2009. The agent stated that this was not possible as on August 8, 2009 the tenant was hospitalized. The landlord stated that once she had the keys the locks to the rental unit were changed and any items remaining in the unit were placed in storage. The landlord stated that she has made an inventory of the items stored.

During the hearing it was agreed between the parties that the tenant's belongings will be returned to the tenant by the landlord on September 1, 2009 at 5:00 p.m. The agent confirmed the delivery address with the landlord.

The tenant's agent testified that two deposits in the sum of \$325.00 were paid to the landlord. The agent referenced a Shelter Confirmation document indicating that she was to become a tenant effective December 1, 2003 and that as a result a second deposit had been paid.

The tenant has claimed \$10,000.00 for the loss of personal items listed including

*"personal pictures (children & old relatives), a huge amount of paper work & picture (2 year project) research, (urn) ashes of husband are but a few items (personal) *irreplaceable*."*

During the hearing the tenant stated that there was also jewelry left in the rental unit.

Analysis

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$700.00 for July 2009, and that the landlord is entitled to compensation in that amount. I found the agent's testimony, that the tenant had paid rent, without merit as the agent provided no evidence of payment. I accepted the landlord's testimony that she always uses the same procedure for rent payments made and that the receipt book indicates that the July receipt for the tenant was not completed due to non-payment of rent.

The parties have agreed that the items left in the rental unit will be returned to the tenant on September 1, 2009. I dismiss without leave to reapply the tenant's claim for compensation in the sum of \$10,000.00. The tenant has provided no evidence of a loss equivalent to \$10,000.00. There is no inventory of items left in the rental unit or verification of the value of items. I also find that the tenant did return his keys, in response to the 10 Day Notice to End Tenancy and that the items were abandoned by the tenant. I make this finding based upon the landlord's corroborating evidence and the failure of the tenant's agent to provide any evidence that the tenant was hospitalized on August 8, 2009.

I find that if the parties fail to meet as agreed upon on September 1, 2009 the landlord may dispose of the items as required by Part 5 of the Residential Tenancy Regulation.

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The tenant has not applied for return of any deposit paid; however, I do find that only one deposit in the sum of \$325.00 was paid in September 2004. The agent's assertion that she paid a second deposit is not supported by any evidence of such a payment being made. Further, the agent signed a Shelter Confirmation form, but there is no evidence before me that the agent ever signed a tenancy agreement with the landlord. I have determined that the female agent was an occupant of the rental unit.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of **\$336.49** in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$700.00, which is comprised of unpaid rent. The landlord will be retaining the tenant's security deposit plus interest, in the amount of **\$336.49**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$363.51**. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The parties have agreed to meet on September 1, 2009 so that the tenant's belongings may be returned. If this arrangement fails the landlord is at liberty to dispose of the belongings as determined by Part 5 of the Residential Tenancy Regulation.

The balance of the tenant's application is dismissed without leave to reapply.

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: August 31, 2009.

Dispute Resolution Officer