

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was 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 testimony and to make submissions to me.

Preliminary Matter

At the start of the hearing the tenant confirmed receipt of the landlord's evidence.

Toward the conclusion of the hearing the tenant testified that his copy of the Application for Dispute Resolution included a request for an Order of possession. The copy of the on-line Application for Dispute Resolution submitted by the landlord does not include a request for an Order of possession. The dispute details reviewed at the start of the hearing were not questioned by the tenant, nor did the tenant indicate that the details of the landlord's claim for compensation were omitted from his copy of the Application for Dispute Resolution. Therefore, I find that the tenant was aware of the claim made against him by the landlord.

Issue(s) to be Decided

Is the landlord entitled to compensation for the loss of July 2009 rent?

May the landlord retain the deposit paid by the tenant in partial satisfaction of the monetary claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord testified that on June 6, 2009 the tenant signed a one year fixed-term tenancy agreement with the landlord and that a deposit in the sum of \$260.00 was paid on that date. The tenancy was to commence on July 1, 2009 and required the tenant to pay monthly rent of \$685.00 on the first day of each month. A copy of the signed residential tenancy agreement was submitted by the landlord as evidence. The tenant testified that at the time of signing he did not receive a copy of the agreement.

The landlord is requesting compensation for unpaid July, 2009 rent as the tenant did not move into the rental unit and did not pay rent. The landlord is claiming retention of the deposit paid in partial satisfaction of the claim for compensation.

On June 27, 2009 the tenant met the landlord's agent at the rental building and was shown several different suites. The tenant testified he had gone to the building in search of the individual with whom he had signed the tenancy agreement and he had been trying to contact this person so that he could settle the matter of the tenancy.

The tenant testified that his deposit receipt indicates that he was to rent unit 212, that the tenancy agreement indicates unit 208 and that the application for dispute resolution indicates unit 209. The tenant stated that the agreement had not been finalized and that the use of different rental unit numbers indicates that there was no finalized agreement to rent. The tenant stated there were a number of units available within this building.

The tenant testified that the landlord has breached section 23(3) of the Act, as a move-in condition inspection was not offered to him.

The landlord testified that on June 27, 2009 he showed the tenant several other suites that were available for occupation and that he understood the tenant wished to take unit 209, the unit indicated on the Application for Dispute Resolution. The landlord stated that on June 27 he sensed the tenant was attempting to "get out of" the agreement.

The landlord submitted a copy of an email sent by the tenant on July 3, 2009 in which the tenant refers to his having signed an application form and making payment of a deposit in the sum of \$260.00. The tenant email requests return of the deposit paid as the landlord failed to complete a move-in condition inspection that was scheduled for July 1, 2009. On July 6 the landlord emailed the tenant asking him to call so they could discuss the matter and on July 15 the tenant responded, declining the request and again asked for return of the deposit paid.

Analysis

I find, from the evidence before me and the testimony of the parties, that on June 6, 2009 the tenant did sign a one year fixed-term tenancy to commence on July 1, 2009.

Section 45 of the Act determines that a tenant may give written notice to end a fixed term tenancy at the end of the term. The tenant did not move into the rental unit and has submitted that due to the change in rental unit numbers and the failure of the landlord to complete a move-in condition inspection a contract was not fulfilled and the landlord's claim should be dismissed.

The issue of a move-in condition inspection is not relevant to this matter. The issue is whether the tenant breached the Act by failing to satisfy the terms of the tenancy agreement signed on June 6, 2009. I find that this document was not an application, as the document clearly shows it was a Residential Tenancy Agreement. I have based my decision on section 16 of the Act which provides:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

(Emphasis added)

I find that the landlord is entitled to unpaid rent for July 2009 in the sum of \$685.00.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit, in the amount of **\$260.00** in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$735.00, which is comprised of \$685.00 in unpaid July 2009 rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The landlord will be retaining the tenant's security deposit, in the amount of **\$260.00**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$475.00. 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.

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: November 09, 2009.

Dispute Resolution Officer