



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, MNR, 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 a monetary Order for money owed or compensation for damage or loss; a monetary Order for unpaid rent or utilities; 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.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at a forwarding address that was supplied to him by the Tenant on July 16, 2009. A Canada Post receipt was submitted in evidence, which corroborates that a package was sent to that forwarding address. The Canada Post website shows the mail was delivered to the Tenant on July 23, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for expenses incurred as a result of a premature end to a fixed term tenancy agreement; compensation for unpaid utilities; to keep all or part of the security deposit; and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that indicates the parties entered into a fixed term tenancy for a rental unit in this residential complex that began on April 01, 2009 and was scheduled to end on March 30, 2010. This tenancy agreement appears to have been signed by the Tenant and the Agent for the Landlord.

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The Agent for the Landlord stated that the parties mutually agreed to end their fixed term tenancy and that they entered into another fixed term tenancy agreement for a different rental unit within the same residential complex. The Landlord submitted a copy of a tenancy agreement that declares this fixed term tenancy was to begin on June 01, 2009 and was scheduled to end on May 31, 2010; and that the Tenant was required to pay monthly rent of \$900.00 on the first day of each month. This tenancy agreement is not signed or dated by the Tenant or the Landlord. The Agent for the Landlord declared that the security deposit of \$437.50 that the Tenant paid for the previous tenancy was transferred to this tenancy.

The Agent for the Landlord stated that the Tenant verbally advised him on July 02, 2009 or July 03, 2009 that she was considering vacating the rental unit, at which time he advised her that she was required to provide written notice of her intent to vacate the rental unit that was in compliance with the dates of their fixed term tenancy. He stated that she never provided written notice of her intent to vacate the rental unit; that she returned her keys to the rental unit on June 29, 2009; and that her uncle returned his keys to the rental unit on July 02, 2009.

The Agent for the Landlord stated that he advertised the rental unit on Craig's List as soon as it was vacated and that he was able to find a new tenant for September 21, 2009. The Landlord is seeking compensation for lost revenue from the month of July, in the amount of \$900.00, as the late notice provided by the Tenant prevented the Landlord from finding new tenants for that month.

The Landlord is claiming compensation, in the amount of \$450.00, for liquidated damages. The unsigned tenancy agreement declares that liquidated damages of \$437.50 will be paid if the tenant ends the tenancy before the end of the fixed term.

The Landlord is claiming compensation for unpaid utilities. In the Application for Dispute Resolution the Landlord declared it was claiming compensation in the amount of \$100.00 for unpaid utilities however the Agent for the Landlord amended that monetary claim to \$70.70 at the hearing. The Agent stated that the Tenant was required to pay her own hydro and that she did not pay a hydro bill, in the amount of \$44.55 that was payable to the City of New Westminster, and a hydro bill that was payable to the City of New Westminster in the amount of \$26.15.

The Landlord submitted a copy of a letter that indicates that there was an outstanding hydro bill of \$44.55 that is associated to the rental unit that the Tenant previously occupied and that this amount will be added to the Landlord's property taxes if it remains unpaid. A stamp on this letter indicates that this debt was paid on August 04, 2009 by the Landlord.

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The Landlord submitted no documentary evidence to show that there is an outstanding hydro bill of \$26.15.

The Agent for the Landlord withdrew the Landlord's claim for compensation for a missing remote control, as that item has since been returned to the Landlord.

Analysis

Based on the evidence provided by the Landlord, and in the absence of evidence to the contrary, I find that the Tenant entered into a fixed term tenancy agreement for a rental unit in this residential complex that began on April 01, 2009 and ended, by mutual consent, on May 31, 2009. I find that the Tenant subsequently entered into an oral tenancy agreement with the Landlord for this rental unit that required the Tenant to pay monthly rent of \$900.00 on the first day of each month. As the Tenant did not sign the fixed term tenancy agreement for this rental unit for the period between June 01, 2009 and May 31, 2010, I cannot conclude that the Tenant entered into a fixed term tenancy for that period.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent to end the tenancy. I find that the late notice prevented the Landlord from entering into a tenancy agreement with new tenants until the Tenant vacated the rental unit. As the Tenant's uncle did not vacate the rental unit until July 02, 2009, I find that the Tenant's actions greatly contributed to the Landlord's inability to find new tenants for the month of July of 2009.

I find that the Tenant must pay rent for the month of July, in the amount of \$900.00, pursuant to section 67 of the *Act*, as her failure to comply with section 45 of the *Act* greatly contributed to a loss of rental revenue for that month.

As the Tenant did not sign a fixed term tenancy agreement for this rental unit, I can not conclude that the Tenant agreed to pay liquidated damages in the event she ended the tenancy before the end of a fixed term. On this basis, I dismiss the Landlord's application for compensation for liquidated damages in the amount of \$450.00.

Based on the evidence provided by the Landlord, and in the absence of evidence to the contrary, I find that the Tenant was required to pay her own hydro costs for each of these rental units. I find that the Tenant did not pay a hydro bill, in the amount of \$44.55, for the rental unit that was previously occupied by the Tenant. As this Application for Dispute Resolution does not relate to the previously occupied rental unit, however, I find that I am unable to award the Landlord compensation for this unpaid bill. The Landlord retains the right to file another Application for Dispute Resolution to claim



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compensation for this unpaid bill in the event that the Tenant does not voluntarily repay this debt.

As the Landlord provided no documentary evidence to establish that the Tenant has not paid the hydro bill of \$26.15, I find that I am unable to conclude that this amount is owed. On this basis, I dismiss the Landlord's claim for compensation in this amount.

I find that the Landlord's 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 \$437.50, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$950.00, which is comprised of \$900.00 for loss of revenue and \$50.00 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 \$437.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$512.50. 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 04, 2009.

Dispute Resolution Officer