



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession; a monetary Order for money owed or compensation for damage or loss; 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. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to extend the end date of her tenancy. At the hearing the Tenant withdrew her application for an extension of the end date of the tenancy, as the rental unit has been vacated. She stated that she wishes her security deposit returned and she opposes the Landlord's application for compensation for the fee for filing the Landlord's Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Neither party raised any preliminary issues.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue as a result of how this tenancy ended; 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. The Agent for the Landlord and the Tenant agree that this tenancy began on July 03, 2009 and that each co-tenant was responsible for paying monthly rent of \$500.00.

The Agent for the Landlord stated that the Tenant paid a security deposit of \$325.00 and that her co-tenant paid a security deposit of \$175.00. The Agent for the Landlord stated that the Tenant paid \$500.00 prior to moving into the rental unit and \$325.00 at the beginning of July, which represented rent payment for July and the security deposit.

The Tenant stated that she paid \$500.00 on June 29, 2009, which was the entire security deposit; that her co-tenant did not pay any portion of the security deposit; and that the Tenant paid \$500.00 in rent for July of 2009.

The Agent for the Landlord and the Tenant agree that receipts were issued for the payments made by the Tenant, although neither party submitted them in evidence. The parties agree that the Tenant was issued a receipt, dated July 01, 2009, in the amount of \$497.50, which stipulated that it was for shared rent. The Tenant stated that this was for a rent payment from July, although she cannot explain why it is for \$2.50 less than was due. The Agent for the Landlord agreed that this receipt was issued for a rent payment from July, and she stated that the \$2.50 reduction is related to a banking fee that was charged to the Landlord.

The parties agree that the Tenant was issued a receipt, dated July 02, 2009, in the amount of \$325.00, which stipulated that it was for rent for July. The Agent for the Landlord stated that this receipt was issued for the security deposit paid by the Tenant and that the reference to a rent payment was an error. The Tenant agreed that she did not pay \$825.00 in rent for July of 2009 so she accepts that both receipts could not have been for rent. She stated that she did not look closely at the receipts and she is adamant that her co-tenant did not pay any portion of the security deposit.

The Witness for the Landlord stated that she paid \$175.00 to the Landlord, in the presence of the Tenant, as a partial payment of the security deposit.

The Agent for the Landlord and the Tenant agree that the Landlord and the Tenant entered into a mutual agreement, in writing, to end their tenancy at noon on October 31, 2009. The parties agree that the Tenant had the majority of her belongings removed by October 31, 2009 and that she had to move a few items on November 01, 2009.

The Agent for the Landlord and the Tenant agree that the Tenant filed an Application for Dispute Resolution on October 09, 2009, in which she requested an extension of her tenancy. The Tenant stated that she filed the application because she did not know if the accommodations she planned to move into would be available for November 01, 2009 and she did not, therefore, know if she would be vacating the rental unit. She

stated that she advised the Landlord that she was searching for new accommodations, that she did not know if she would be able to find new accommodations by the end of October; and that she did not subsequently advise the Landlord that she would be vacating the rental unit at the end of the month until October 28, 2009.

The Agent for the Landlord stated that based on the conversations between the Tenant and the Landlord and/or his agents, and the Application for Dispute Resolution that the Tenant had filed, the Landlord did not know whether the rental unit would be vacated at the end of October, which prevented the Landlord from finding a new tenant. She stated that the Landlord did advertise the rental unit prior to the end of October but the Landlord was unable to enter into a tenancy with anyone because of the uncertainty of the vacancy date. She stated that the Landlord continued to advertise after learning, on October 29, 2009, that the Tenant would be vacating the rental unit at the end of the month and that they found a new tenant for December 01, 2009. The Landlord is seeking compensation, in the amount of \$500.00, for the loss of revenue they incurred for the month of November, which the Landlord contends is the direct result of the Tenant's actions.

The Landlord is claiming \$175.00 in compensation for labour costs associated to processing these Applications for Dispute Resolution.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$500.00 on the first day of each month.

I find that the Tenant paid a security deposit of \$325.00. In reaching this conclusion, I was strongly influenced by the receipts that were issued to the Tenant and the evidence of the Witness for the Landlord, both of which corroborate the Agent for the Landlord's statement that the Tenant paid \$500.00 in rent and a security deposit of \$325.00 at the beginning of the tenancy, and refute the Tenant's statement that she paid \$500.00 in rent and a security deposit of \$500.00 at the beginning of the tenancy.

I find that the parties entered into a mutual agreement to end this tenancy on October 30, 2009. I find that by her words and her actions, in particular the filing of her Application for Dispute Resolution, the Tenant made it clear to the Landlord that she may not be vacating the rental unit on October 30, 2009. I find that the Landlord could not have reasonably expected the Tenant would vacate the rental unit at the end of October until October 28, 2009, when the Tenant informed the Landlord that she now intended to vacate the rental unit. I find that the Tenant's actions prevented the Landlord from entering into a new tenancy agreement with another Tenant as the Landlord could not have reasonably known, until October 28, 2009, when the new tenancy could begin. On this basis, I find that the Tenant must compensate the Landlord for the loss of revenue that resulted from her actions, in the amount of \$500.00, pursuant to section 62(3) of the *Act*.

I find that the Landlord's application has merit, and I therefore find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The *Act* does not authorize me to award compensation for administrative costs related to participating in a dispute resolution proceeding, with the exception of the filing fee. On this basis, I dismiss the Landlord's application for compensation, in the amount of \$175.00, for labour costs associated to this application.

I find that the Landlord is entitled to retain the Tenant's security deposit, in the amount of \$325.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$550.000, which is comprised of \$500.00 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 \$325.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$225.00. 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 24, 2009.

Dispute Resolution Officer