



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNR, and FF

Introduction

This hearing was in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities and to recover the filing fee from the Tenant for the cost of filing this application.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

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.

Issue(s) to be Decided

The issue to be decided in relation to the Landlord's Application for Dispute is whether the Landlord is entitled to a monetary Order for unpaid utilities and to recover the cost of filing this Application for Dispute Resolution.

The issue to be decided in relation to the Tenant's Application for Dispute is whether the Tenant is entitled to the return of the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that names the former landlord and the Tenant, which indicates that the tenancy began on March 15, 2008; that the Tenant was required to pay monthly rent of \$750.00; and that the Tenant was required

to pay "power, telephone, heat, and other utilities". The tenancy agreement is not signed by either party, although the Tenant acknowledged that she agreed to the terms noted above.

The Tenant stated that she paid a security deposit of \$375.00 on, or about, March 15, 2008. As the Landlord did not own the property at the beginning of this tenancy, he does not know when the payment was made, although he does not dispute that this payment was made.

The Landlord stated that the Tenant vacated the rental unit on November 02, 2009 and the Tenant declared that she vacated the rental unit on November 01, 2009. The Tenant stated that she did not provide the Landlord with her forwarding address, in writing, until she filed her Application for Dispute Resolution.

The Landlord is claiming compensation, in the amount of \$857.75, for Terasen gas bills. The Landlord stated that the rental unit is heated by a gas boiler. The Tenant stated that she does not know how the rental unit was heated; that she assumed it was heated by hydro; and that she had paid her own hydro bills. The occupant acknowledged that the rental unit was heated by a boiler.

The Landlord submitted a copy of an invoice that he created which itemizes thirteen Terasen gas bills that were added and divided by nine. The Landlord stated that the gas bills are for the entire residential complex and he divided the bills by nine, as the expenses were to be evenly shared by the nine rental units in the complex. The Landlord did not submit copies of the gas bills.

The Tenant stated that the Landlord had asked her to pay gas expenses; that she did not pay the gas expenses because she did not realize that the rental unit was heated by gas; that the Landlord never gave her a copy of any of the bills; and that he never provided her with the invoice he submitted in evidence until approximately one week prior to the hearing.

The Landlord acknowledged that he did not give the Tenant copies of the gas bills but he states that he gave her the invoice he submitted in evidence sometime in July of 2009.

Analysis

The undisputed evidence is that the Tenant agreed to pay heating costs for the rental unit and that the rental unit was heated by a gas boiler. I therefore find that the Tenant was obligated to pay gas costs associated to heating this rental unit.

When making a claim for compensation for money owed under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in these circumstances includes establishing that the Tenant must pay heating costs and establishing the amount of the heating costs. In these circumstances, I find

that the Landlord has submitted insufficient evidence to establish that the heating costs for this unit were \$857.65. In reaching this conclusion I was strongly influenced by the absence of documentary evidence, such as the bills from Terasen Gas, that shows the Landlord was billed the amounts that are included on the invoice he submitted in evidence. As the Landlord has not submitted documentation that corroborates his claim that the Tenant owes \$857.65 in utilities, I hereby dismiss his application for a monetary Order for unpaid utilities.

On the basis of the evidence provided by the Tenant, and in the absence of evidence to the contrary, I find that the Tenant paid a security deposit of \$375.00. As the Landlord has not established that the Tenant owes him money, I find that the Landlord must return the security deposit, plus \$4.49 in interest.

Conclusion

As the Landlord has not established a monetary claim, I hereby dismiss the Landlord's application for compensation for the cost of filing his Application for Dispute Resolution.

I dismiss the Tenant's application for compensation for the cost of filing her Application for Dispute Resolution, as she had not provided the Landlord with her forwarding address, in writing, prior to filing the Application for Dispute Resolution. I find that she filed her Application for Dispute Resolution prematurely, as the Landlord was not required to return her security deposit until she provided him with her forwarding address in writing.

I find that the Tenant has established a monetary claim of \$379.49, which is comprised of the security deposit, and \$4.49, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: December 29, 2009.

Dispute Resolution Officer