



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MNDC, 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 compensation for unpaid rent, for damage or loss, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about 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.

Preliminary Matter

The tenants moved out of the rental unit, therefore, an Order of possession is not required.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to compensation for damages or loss?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced in October or November 2005. A deposit in the sum of \$1,750.00 was paid in September 2005. The tenancy ended on February 28, 2010 as the result of a 2 Month Notice to End Tenancy for Landlord's Use of the Property. The tenants were provided with compensation as required by the Act and as a result did not pay January 2010, rent.

A previous dispute resolution decision issued on June 10, 2008, by dispute resolution officer Coulson, determined that the tenants were responsible for payment of utility costs.

The landlord has applied for dispute resolution claiming against the deposit prior to the end of the tenancy, as the result of the non-payment of rent and utility costs.

The landlord submitted as evidence copies of District of West Vancouver metered utility statements commencing January 1, 2007 to March 2010. The landlord is claiming unpaid water, sewer, waste, recycling and waste costs in the sum of \$4,218.68 incurred between those dates. The tenancy agreement indicates that utilities were not included in the rent owed.

The landlord stated that at the start of the tenancy the tenants were told that the water would eventually be metered and that they would then be responsible for water costs. The landlord paid the water bills from 2007, when the meters were first installed, until the end of the tenancy when the home was sold. The landlord stated she repeatedly talked with the female tenant, who was not present at this hearing, telling her that the water bills were the tenant's responsibility, but that the tenants refused to accept responsibly for water payments.

The tenant stated he had not seen the water bills until he was served with an amended Application by the landlord's real estate agent, approximately ten days ago. The tenant stated that they paid gas and hydro costs from the start of the tenancy and that the landlord had not approached them in relation to the water bills, sent them any correspondence or provided them with bills; however the tenants had been aware that water meters were to eventually be installed.

The landlord has claimed unpaid rent in the sum of \$1,750.00 for February rent. The tenants paid one half of February rent and deducted the deposit from the balance of rent owed.

The landlord is claiming cleaning costs in the sum of \$532.00, but did not submit any evidence to support this claim. A move-in and move-out condition inspection was not completed by the landlord.

Analysis

The previous decision issued on June 10, 2008 found that the tenants were responsible for utilities. The tenancy agreement signed between the parties indicates that water costs are not included in the rent.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have considered the actions of the landlord and the absence of any evidence that the tenants were given prior notice of the expectation that water and sewer costs were to be assigned to the tenants after January 2007. The tenants paid gas and hydro utilities and had those placed in their name at the start of the tenancy. The landlord received all water bills at her home address and paid those bills since the service was metered in January 2007; more than one year after the tenancy commenced. Prior to January 2007, no charges for water were made to the tenants.

It has been previously found that, from the start of the tenancy, the tenants were responsible for utility payments. The decision issued on June 10, 2008 indicated a dispute only in relation to a new tenancy agreement, which the tenants believed did not require payment of any utility costs. The June 2008 decision did not reference any dispute in relation to unpaid water bills dating back to January 2007.

The tenancy agreement indicates that the tenants are responsible for utility costs; however, the landlord made water bill payments throughout this tenancy and failed to take any steps to mitigate the claim she is now making. There is no evidence before me that the tenants were issued a Notice to End Tenancy for Unpaid Utilities, any warning letters or other written demands for payment.

I find that the failure of the landlord to present the tenants with any copies of the water bills, any written demand for payment or any other attempt at mitigation, as required by section 7 of the Act, leaves the responsibility for payment of water costs by the tenants in doubt. Section 7 of the Act requires a landlord to do whatever is reasonable to minimize a claim for damages against a tenant. There is no evidence before me of any attempt made by the landlord to mitigate the claim that accrued over a 3 year time-frame. The landlord allowed the water bills to accumulate between January 2007 and February 2010 and provided no evidence of any attempt to mitigate.

Therefore, in the absence of evidence that the landlord made reasonable steps to mitigate the loss claimed, I find, on the balance of probabilities, that the water costs must be borne by the landlord and that the claim for compensation is dismissed.

As there is no evidence before me supporting the claim for cleaning costs, I dismiss the claim for cleaning costs.

I find that the tenants deducted the equivalent of their deposit from rent owed in February, 2010. Therefore, I find that the landlord is entitled to retain the deposit paid in the sum of \$1,750.00 for the balance of February 2010, rent owed.

The landlord is holding a deposit plus interest that has been calculated from September 21, 2005; the date the tenancy agreement was signed, in the sum of \$1,811.95.

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of \$1,750.00, in satisfaction of the monetary claim for unpaid February, 2010, rent owed.

I find that the landlord's application has partial merit, and that the landlord is entitled to recover the \$50.00 filing fee from the tenants deposit for the cost of this Application for Dispute Resolution.

As the landlord has claimed against the deposit, I find that the balance of the deposit plus interest in the sum of \$11.95 must be returned, forthwith, to the tenants.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,800.00, which is comprised of February 2010 rent owed 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 plus interest, in the amount of \$1,800, in satisfaction of the monetary claim.

Based on these determinations I grant the tenants a monetary Order for the balance of \$11.95. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The claim for water utility costs and cleaning costs 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: April 06, 2010.

Dispute Resolution Officer