

DECISION

Dispute Codes

Landlord: MNR, FF

Tenant: MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for return of the security deposit and to recover the filing fee from the landlord for the cost of this application.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the tenant entitled to recover the security deposit from the landlord?

Background and Evidence

This month-to-month tenancy began on July 1, 2009 and ended on February 28, 2010. Rent in the amount of \$1,500.00 was due in advance on the 1st day of each month. At the outset of the tenancy, the tenant paid a security deposit in the amount of \$750.00.

The landlord testified that she had received a notice in the mail box on February 1, 2010 when the tenant's sister arrived to pay \$1,000.00 of the rent that was due for February. At that time she saw something in the mail box and discovered the notice to vacate the premises dated February 1, 2010 from the tenant. The landlord testified that she photocopied a page from the Residential Tenancy Branch pamphlet and told the tenant that she would do her best to get the unit re-rented for March 1, 2010 and to let her know when the unit was clean and ready to show. The tenant did let her know, and she

testified that she did put a notice in the local newspaper. She further asked the tenant if 24 hours notice would be required to show the unit to perspective renters, and he replied that he would be away so it would be advisable to phone his girlfriend. The tenant did call when the unit was ready but when the landlord arrived to show the unit, she was advised by another person that she could not show the unit because she did not offer 24 hours written notice. The landlord told the person about the conversation that she had had with the tenant, but she was still denied access to show the unit.

The landlord further testified that she had told the people that wanted to view the unit that 24 hours written notice was required; they said they'd call back but did not, and that 5 other perspective tenants said they'd call back, but never did. The landlord feels that perspective tenants had found other accommodation and that since she was required by the tenant to give the written notice, the landlord lost those tenants. She testified that she placed a letter in the tenants' mail box asking for leniency because it was in the best interest of both parties, but the tenant did not respond. The unit has still not been re-rented.

The tenant testified that he had a friend living with him who said he'd be staying for the month of March, but he moved out suddenly on January 30, 2010. The tenant did not have enough money to pay for all of February's rent on the 1st of the month, but paid the balance on February 5, 2010.

The landlord testified that 3 tenants residing in the unit paid \$250.00 each toward the \$750.00 security deposit. \$250.00 was returned to another tenant, and \$375.00 was returned to this tenant. The landlord acknowledges owing the tenant \$125.00. The tenant stated that he paid the entire \$750.00 and that the landlord gave \$250.00 to another exiting tenant without his permission or knowledge. He further stated that he has the landlord's cheque for \$375.00, but has not yet cashed it.

Analysis

Firstly, dealing with the landlord's application for a monetary order for unpaid rent, the landlord is entitled to receive written notice when a tenant intends to vacate a rental

unit, and that written notice must comply with the *Residential Tenancy Act*, which states as follows:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Since the tenant did not give the notice until the first day of the month and the tenancy agreement states that rent is due on the 1st day of each month, the landlord is entitled to receive one month's rent from the tenants.

With respect to the tenant's application for the return of the security deposit, the tenancy agreement clearly shows that the tenant paid \$750.00 at the outset of the tenancy. The portion that was returned to another tenant is not relevant to the tenant's claim.

The landlord paid to the tenant \$375.00 of that security deposit, which demonstrates that the landlord made certain deductions without making an application for dispute resolution.

I have no evidence before me of the date that the tenant provided the landlord with his forwarding address in writing, however, the landlord clearly had it on the Tenant's Application for Dispute Resolution which was served on the landlord prior to the hearing. Although I do not have the date of such service, I find that the landlord was provided with the forwarding address of the tenant by May 21, 2010.

The landlord's application was filed on March 1, 2010 and the tenant's application was filed on May 18, 2010. The landlord has not claimed against the security deposit. The *Residential Tenancy Act* states as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further,

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the landlord did not make an application for dispute resolution claiming against the security deposit nor return the security deposit within the 15 days provided in the *Act*, and therefore, the tenant is entitled to recovery of double the amount of the security deposit. It is clear in the evidence before me that the tenant has been given \$375.00 of that deposit back. Double the amount of the security deposit is \$1,500.00, less the \$375.00 returned to the tenant leaves a balance due to the tenant in the amount of \$1,125.00. Having found that the tenant owes the landlord \$1,500.00 and the landlord owes the tenant \$1,125.00 I order that the amounts be offset from one another. I further order that the cheque in the amount of \$375.00 in the possession of the tenant ought to be cashed by the tenant.

Conclusion

For the reasons set out above, I hereby grant the landlord a monetary order in the amount of \$375.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since both parties have been partially successful in their applications, I decline to award the filing fee to either party.

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: June 24, 2010.

Dispute Resolution Officer