

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an order to retain the security deposit and pet damage deposit and to recover the filing fee from the tenant for the cost of this application.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 4, 2010, the tenant did not attend the conference call hearing. The landlord gave affirmed evidence.

At the outset of the hearing, the landlord applied to amend her application to include an application for a monetary order for unpaid rent and utilities. The application before me requests an order permitting the landlord to retain the security deposit, and the body of the details of the dispute in the application form requests a monetary order for rent and utilities. In the circumstances, I find that failing to tick the box beside unpaid rent or utilities does not prejudice the tenant, in that the details of the dispute are clear. The application is hereby amended.

Issues(s) to be Decided

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

Is the landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on April 1, 2009 and was to expire March 31, 2010. The tenancy agreement, a copy of which was provided in advance of the hearing indicates

that rent is payable on the 1st day of each month in the amount of \$750.00, however, the landlord testified that she had reduced the rent for this tenant to \$700.00 per month after the 1st month of the tenancy.

On March 16, 2009, the landlord collected a security deposit from the tenant in the amount of \$375.00, and on April 1, 2009, the landlord collected a pet damage deposit from the tenant in the amount of \$375.00.

The tenancy agreement specifically states that “utilities are divided by number of adults living in the house,” and the landlord testified that the utilities owed by this tenant are \$150.75 for Terasen Gas and BC Hydro combined. Copies of those bills were provided in advance of the hearing with a calculation showing how much is owed by each tenant. She further testified that copies of the utility bills were given to the tenant prior to the end of February, 2010.

The landlord testified that she had a conversation with the tenant on February 22, 2010 wherein the tenant claimed to have given one months’ notice to vacate the premises, and that the tenant claims that she put it on the door of the landlord’s address on February 1, 2010. The landlord further testified that she did not receive the notice, and is claiming rent for the month of March, 2010 in the amount of \$700.00. The tenant vacated the unit on February 28, 2010.

Analysis

Based on the landlord’s evidence, I accept that the tenant vacated the unit on February 28, 2010. The Residential Tenancy Act states that:

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.

I find that even if the tenant had given notice on February 1, 2010 as claimed, the *Act* requires that the notice be given before the day rent is payable.

With respect to the utilities, the *Act* states that:

46 (6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord,
and

(b) the utility charges are unpaid more than 30 days after the tenant is given a
written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give
notice under this section.

I find that the tenant was given written demand for the payment of utilities prior to
vacating the unit and the landlord may now claim those utility charges as unpaid rent.

With respect to the security deposit and pet damage deposit, the *Act* states that a pet
damage deposit can only be awarded to the landlord for damage caused by a pet, and I
have no evidence of that before me. However, Section 72 of the *Act* permits me to
order that any amount due to the landlord be deducted from any security deposit or pet
damage deposit due to the tenant.

Conclusion

As for the monetary order, I find that the landlord has established a claim for \$700.00 in
unpaid rent and \$150.75 for utility charges. The landlord is also entitled to recovery of
the \$50.00 filing fee. I order that the landlord retain the security deposit and interest of

\$375.00 and the pet damage deposit in the amount of \$375.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$150.75. This order may be filed in the 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: June 14, 2010.

Dispute Resolution Officer