

DECISION

Dispute Codes:

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 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.

The tenant made a written submission dated May 28, 2010, in which the tenant indicated he would not be able to attend. The tenant requested that his written submission be considered as evidence. The landlord confirmed receipt of the tenant's written submission. Therefore, I find, pursuant to section 71(2) of the Act, that the tenant has been sufficiently served with Notice of this hearing and that the written submission would be considered.

Preliminary Matter

The landlord's Application was amended to reflect the claim outlined in the details of the Application, requesting compensation for damages and loss, against the deposit paid.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages of loss under the Act?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

On September 23, 2009, the tenant signed a tenancy agreement for a tenancy start date of November 15, 2010; rent was due on the first day of each month. On September 23, 2010, the tenant paid a deposit in the sum of \$700.00.

On October 6, 2009, the tenant sent a facsimile to the landlord, after meeting with her on October 5; confirming that he could not move in. Subsequently the tenant received a

call from Terasen Gas indicating that another tenant was wanting to set up service for that address.

The tenant submitted that he gave the landlord ample Notice that he could not move in.

The landlord testified that they did find new tenants who moved in on November 9, 2009.

The landlord is claiming against the deposit for advertising costs and the time spent locating new tenants.

Analysis

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.

In the absence of evidence supporting costs related to re-renting the unit such as advertising invoices for this particular suite or any other evidence verifying any loss in relation to the re-renting of the suite, I find that the landlord not provided proof, on the balance of probabilities, that a loss has been experienced. Further, the landlord was able to rent the unit for a date prior to the tenant's tenancy start date, so no loss of revenue occurred. Therefore, I find that the claim against the deposit paid is dismissed.

As the landlord's claim against the deposit is dismissed I find, pursuant to sections 62(3) and 67 of the *Act*, that the landlord must return the deposit to the tenant, forthwith.

I have issued a monetary Order to the tenant in the sum of \$700.00.

As the landlord's claim does not have merit, I decline filing fee costs to the landlord.

Conclusion

The landlord's claim is dismissed.

The tenant is entitled to return of the \$700.00 deposit paid.

Based on these determinations I grant the tenant a monetary Order in the sum of \$700.00. 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

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: July 23, 2010.

Dispute Resolution Officer