



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNR, MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and compensation for loss and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied for a monetary order for unpaid rent and utilities, to retain the deposit and to recover the filing fee from the tenant 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 during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The landlord confirmed receipt of the tenant's Notice of hearing in October, 2010. The tenant failed to initiate service of his Notice of hearing within 3 days of June 30, 2010; the date he submitted his Application. I found that the landlord had been served with Notice of the hearing and that the tenant's claim would be heard and decided.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid?

Is the landlord entitled to a monetary Order for unpaid April, 2010, rent in the sum of \$750.00 and hydro costs?

Is either party entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed that the tenancy commenced on April 1, 2010. The landlord supplied a copy of the tenancy agreement signed on March 30, 2010; rent was \$750.00 per month due on the first day of the month; a deposit in the sum of \$375.00 was paid. Electricity costs were not included in the rent. The tenant moved in on March 31, 2010.

A break-in occurred on March 31 and on April 1, 2010; the landlord changed a lock, in order to secure the unit. On April 1, 2010, an agent for the tenant gave the landlord verbal notice that the tenant would move out. The tenant vacated the unit on April 3, 2010.

The landlord ripped up the cheque given for April rent owed and the tenant confirmed he has not yet paid April rent.

The landlord confirmed receipt of the tenant's forwarding address by mail some time during the summer of 2010; the landlord did not return the deposit to the tenant or claim against the deposit until October 21, 2010. The tenant did not serve the landlord with his June 30, 2010, Notice of hearing until October.

The tenant confirmed that he was to pay hydro costs. The landlord claimed \$22.11; however, review of the bill submitted as evidence indicated that \$16.38 was owed for April, 2010.

The landlord mitigated any possible loss of revenue by re-renting the unit for May 1, 2010.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The landlord confirmed receipt of the tenant's forwarding address some time during the summer of 2010. The landlord did not claim against the deposit or return the deposit within fifteen days; which I have determined should have occurred at least by September, 2010. Therefore, I find that the tenant is entitled to return of double the \$375.00 deposit paid to the landlord.

Even though the tenant did not wish to remain in the rental unit, the tenant failed to give proper written notice ending the tenancy, as required by section 45 of the Act, which provides, in part:

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.*

The landlord has not retained the cheque given for April rent and I find the landlord is entitled to payment for that month in the sum of \$750.00.

I find that the tenant was responsible for payment of the hydro costs incurred for the month of April in the sum of \$16.38 as the landlord could not be reasonably expected to locate a new tenant for that month.

The tenant's compensation in the sum of \$750.00; double the deposit paid by the tenant, will be retained by the landlord in partial satisfaction of the landlord's claim. I have issued the landlord a monetary Order in the sum of \$16.38, for unpaid hydro costs.

As each parties' claim has merit, neither will pay filing fees to the other.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$750.00, which is comprised of double the deposit paid.

I find that the landlord has established a monetary claim in the sum of \$750.00 for April, 2010, rent owed plus \$16.38 for April hydro costs.

The landlord will retain double the deposit in the sum of \$750.00 in partial satisfaction of their claim.

Based on these determinations I grant the landlord a monetary Order for \$16.38 for hydro costs. In the event that the tenant 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.

Neither party is entitled to filing fees from the other.

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: November 16, 2010.

Dispute Resolution Officer