Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MNSD, MNDC, SS, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for unpaid rent, damage or loss under the Act, to retain the security deposit, substitute service 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.

The tenant did not provide any evidence prior to the hearing.

Preliminary Matter

As the landlord was able to personally serve the tenant with notice of this hearing; the request for substitute service was not required.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid August, 2010, rent?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to compensation for damage or loss under the Act in the sum of $94.64?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 15, 2009, rent was $800.00 per month due on the 15th day of each month. A deposit in the sum of $400.00 was paid on July 25; 2010.A copy of the signed tenancy agreement was submitted as evidence.

On August 12, 2010, the tenant told the landlord he was moving out. The landlord requested proper written notice effective September 15, 2010, but the tenant refused to give written notice. The landlord offered the tenant an opportunity to pay $400.00 rent on August 15, 2010, and the landlord would retain the deposit for the balance of rent owed; the tenant would not sign an agreement ending his tenancy to this effect.

The tenant moved out on August 15 without giving written notice. Only one of two keys was retuned and on August 18, 2010, the landlord had the unit re-keyed. A copy of the invoice was supplied as evidence. The tenancy agreement indicated that 2 keys had been given to the tenant.

The landlord stated that in late October the tenant came to their home and that agreement was reached that the landlord would retain the deposit and the tenant would pay the balance owed. The landlord called the Residential Tenancy Branch and obtained information on cancelling the hearing and was advised to obtain a written agreement in relation to the deposit. The tenant then refused to sign a written agreement and the landlord proceeded with the hearing.

The tenant stated that he had given proper notice in July and that when he called the landlord on August 12 it was only to remind him that he was moving. The tenant stated he did return the keys to the landlord and that he did not offer to settle the matter prior to today's hearing. The tenant gave the landlord a note dated August 15, 2010, in which he requested return of his deposit but the note did not include an address as the tenant stated that landlord knew where he lived.

The landlord submitted their application on August 19, 2010.

Analysis

Section 45 of the Act requires a tenant to provide written notice ending a month-to-month tenancy at least one day prior to the day in the month rent is due; in this case written notice ending the tenancy on August 14 would have been required before July 15, 2010.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to the landlord, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me; I find

the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the landlord over the tenant.

The landlord appears to have made every effort to settle this matter amicably; and even considered cancelling the hearing based on what they thought was a resolution that had been reached. I found the landlord's testimony compelling in relation to the tenant's outright denial in relation to that testimony and the events that occurred at the end of the tenancy.

Therefore; I find that the landlord is entitled to compensation for unpaid August, 2010, rent in the sum of $800.00 and the cost of re-keying the rental unit in the sum of $94.64 and have issued an Order to that effect.

The landlord will retain the deposit in the sum of $400.00 in partial satisfaction of the claim. No interest has accrued.

I find that the landlord's application has merit, and I find that the landlord entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord established a monetary claim, in the amount of $944.64, which is comprised of August, 2010, rent in the sum of $800.00, re-keying in the amount of $94.64 and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the deposit of $400.00 in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance in the sum of $544.64. In the event that the tenant does not comply with this Order, it may be served on the tenant, 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: November 24, 2010.

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Dispute Resolution Officer