Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes   MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit as payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 12, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on December 1, 2009 as a 1 year fixed term tenancy with an expiry date of November 30, 2010. Rent was $1,750.00 per month payable in advance of the 1st day of each month. The Tenant paid a deposit of $1,750.00 in November, 2009. The Landlord said during her testimony that ½ the deposit $875.00 was for the security deposit and ½ the deposit $875.00 was for a pet deposit.

The Landlord said that the Tenant did not pay $1,750.00 of rent for August, 2010 when it was due and as a result, on August 3, 2010 she personally delivered 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2010 to the Tenant's rental unit. The Landlord said the Tenant has unpaid rent for August, 2010 of $1,750.00.

The Landlord continued to say the Tenant's gave her verbal notice on July 29, 2010 that they were moving out and they told her to use the deposit money for the August rent. The Landlord said the Tenant's actually moved out on August 11, 2010. She said the Tenant's gave her a written forwarding address on August 11, 2010 when they moved out.

Analysis

Section 45 (2) says a tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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 Tenant gave the Landlord verbal notice that they were moving out on July 29, 2010 and they moved out August 11, 2010. Pursuant to section 45 (2) (a) and(c) this means the effective vacancy date would be August 30, 2010. I find that the Tenant's are responsible for the August, 2010 rent of $1,750.00. I also find that the Landlord is entitled to recover unpaid the rent for August, 2010 in the amount of $1,750.00.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the $50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit of $875.00 and the Tenant's pet deposit of $875.00 as full payment of the rent arrears. The Landlord will receive a monetary order for $50.00 to recover the filing fee for this proceeding.

Conclusion

I order that the Landlord retain the Tenant's security deposit of $875.00 and the Tenant's pet deposit of $875.00 as full payment of the Tenant's unpaid rent.

A Monetary Order in the amount of $50.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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.*

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Dispute Resolution Officer