



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing, and the tenant also attended. The parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

All information provided has been reviewed and is considered in this Decision.

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 in partial satisfaction of the claim?

Background and Evidence

The undisputed evidence of the parties is that this tenancy began as a fixed term tenancy on January 1, 2007, which expired on June 30, 2007 and then reverted to a month-to-month tenancy. The tenancy ended on June 30, 2010 after the tenant had given notice to vacate the rental unit. Rent in the amount of \$810.00 per month was payable at the beginning of the tenancy, and had raised to \$866.00 before the end of the tenancy. The tenancy agreement provided that the rent was payable in advance by

the 1st day of each month. On December 16, 2006 the landlord collected a security deposit from the tenant in the amount of \$405.00.

The landlord testified that the tenant gave notice on June 5, 2010 to vacate the rental unit on July 4, 2010. The landlord then wrote to the tenant stating that the tenant had to stay to the end of July, according to the *Residential Tenancy Act* and the tenancy agreement. The tenant moved out of the rental unit on June 30, 2010. He further testified that in conversations between the parties, the tenant stated he wasn't sure when he'd be moving, and therefore the landlord could not re-rent the unit for the 15th of July, 2010. He stated that a potential tenant was able to move in July 15, 2010 but the landlord did not know soon enough whether or not the rental unit would be available by then. The tenant moved into the unit on August 1, 2010.

The landlord is claiming one month's rent. He further stated that on advice from the Residential Tenancy Branch, he claimed the amount of rent in the Landlord's Application for Dispute Resolution that was payable at the beginning of the tenancy, not the amount that was payable at the end of the tenancy because he could only provide a tenancy agreement for the original rental amount.

The landlord further testified that the tenant had requested repairs to a leaking pipe inside the bathroom wall. He was unable to fix it so he called a plumber who found the leak and it was repaired. He stated that each time the tenant called for repairs, he fixed them, with the exception of puddles on the concrete basement floor. A sump pump was installed in each unit to prevent a build-up of water that tended to raise with the rainfall. The tenant told him about it in his letter of June 15, 2010. Prior to that, the landlord repaired the bathtub and the toilet as the tenant requested.

The tenant testified that the landlord knew from the notice issued that he was leaving by July 4, 2010. He provided copies of letters written to the landlord on June 15, 2010 and June 28, 2010. The later letter stated that he would be vacating the rental unit on June 30, 2010 and therefore the landlord was able to re-rent the unit for July 15, 2010.

The tenant further testified that the landlord was in breach of the *Act* and the tenancy agreement, and he was therefore justified in breaking the agreement. He stated that a hot water pipe was leaking and had to be turned off causing himself and his family to be without hot water for 7 days. Further the basement had a large puddle causing problems to the whole building foundation, and he feared the building would collapse. He did not feel comfortable or safe in the unit, and the landlord failed to do requested repairs.

He also testified that the building required that the heat be turned off for the entire building each summer due to too much heat. He stated that the landlord did not turn it off until after June 28.

Analysis

I find that the tenant failed to give one month's notice as required under the *Act*:

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.

Therefore, the tenant is obligated under the *Act* to pay rent according to the tenancy agreement and the Notices of Rental Increases which may be served upon the tenant annually.

The tenant testified that he asked for certain repairs to the rental property that were not addressed by the landlord, however no written request was provided that pre-dated the tenant's notice to vacate the unit. Although the tenant may have verbally requested improvements and repairs, I find that the tenant, having lived in the rental unit for almost 4 years, was not justified in breaking the tenancy agreement and therefore was required to comply with Section 45.

Conclusion

For the reasons set out above, I find that the landlord has established a claim for \$866.00 in unpaid rent. 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 \$417.33 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$498.67. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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 23, 2010.

Dispute Resolution Officer