



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant in compensation for the equivalent of one half of one month's rent and to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to section 38 and & 72(1) of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Agent for the Tenant, who is the Tenant's wife, agree that the Tenant and his wife were living in Montreal and seeking accommodations in Vancouver; that they located this rental unit on the Landlord's website; that the parties communicated about renting this rental unit via email; that the Tenant was advised that the rental unit was approximately 800 square feet; that the Tenant asked to be provided with the precise dimensions of the rooms in the rental unit; and that the precise dimensions of each room was never provided to the Tenant.

The Agent for the Landlord and the Agent for the Tenant agree that in spite of not having viewed the rental unit and in spite of not being provided with the precise dimensions of each room, the Tenant and the Agent for the Tenant completed a form in which they applied to rent the rental unit.

The Agent for the Landlord and the Agent for the Tenant agree that the Tenant agreed to rent the rental unit for August 01, 2010; that the Tenant agreed to pay monthly rent of

\$1,081.00 on the first day of each month; and that the Tenant sent a security deposit of \$540.50 to the Landlord on July 08, 2010.

The Agent for the Landlord and the Agent for the Tenant agree that when the Agent for the Tenant viewed the rental unit on July 25, 2010, July 26, 2010, or July 27, 2010 she determined it was too small to accommodate her furniture, at which time the Landlord was verbally advised that the Tenant would not be moving into the rental unit.

The Agent for the Tenant stated that she and the Tenant believed that they had entered into a tenancy agreement with the Landlord on July 08, 2010 when they sent the Landlord the security deposit. The Agent for the Tenant stated that she expected to move into the rental unit when she viewed it on July 25, 2010 or July 26, 2010.

The Agent for the Landlord stated that she understands that the Tenant had entered into a tenancy agreement for the Landlord on July 08, 2010 when the security deposit was mailed to the Landlord.

The Agent for the Landlord stated that the rental unit was rented to other occupants on September 01, 2010. She stated that the Landlord is seeking to retain the security deposit in compensation for the rent that should have been paid by the Tenant on August 01, 2010, although she realizes that the amount of rent due is more than the security deposit that was paid.

The Agent for the Landlord and the Agent for the Tenant agree that the Landlord did not receive a forwarding address for the Tenant, in writing, until October 27, 2010.

Analysis

The *Act* defines a “tenancy agreement” as an agreement, whether oral or written, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a verbal tenancy agreement which gave the Tenant the right to occupy the rental unit, effective August 01, 2010, and which required the Tenant to pay monthly rent of \$1,081.00 on the first day of each month. In my view both parties understood a tenancy was to begin on August 01, 2010 at the time the security deposit was paid and both parties believed that the Tenant would occupy the rental unit on August 01, 2010 until July 25, 2010, July 26, 2010, or July 27, 2010, at which time the Tenant determined the rental unit was too small.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the landlord received the notice and is the day before the date that rent is due. As the Tenant entered into a verbal tenancy agreement with the Landlord, I find that he was obligated to end this tenancy in compliance with section 45 of the *Act*.

The earliest the Tenant could have ended this tenancy in accordance with section 45 of the *Act*, would have been August 30, 2010, providing he provided the Landlord with written notice of his intent to end the tenancy prior to August 01, 2010.

As the Tenant did not provide the Landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due, I find that the Tenant was obligated to pay rent when it was due on August 01, 2010. As the Landlord is only seeking compensation, in the amount of \$540.50, which is the equivalent of one-half of one month's rent, I find that the Landlord is entitled to this amount.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$590.50, which is comprised of \$540.50 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I hereby authorize the Landlord to retain the Tenant's security deposit in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$50.00. 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: January 11, 2011.

Residential Tenancy Branch