



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

FINAL DECISION

Dispute Codes:

MNSD, OLC, MNR, FF

Introduction

This was a cross-Application hearing, as the result of my interim decision issued on January 12, 2011, in which I joined the landlord's Application with the tenant's.

This hearing was scheduled in response to the tenant's September 9, 2010, Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit and an Order that the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The hearing was also scheduled in response to the landlord's Application for Dispute Resolution in which the landlord has requested compensation for unpaid rent, to retain the deposit paid in partial satisfaction of the claim for compensation and to recover the filing fee costs from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the reconvened 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.

Preliminary Matter

The tenant confirmed that she had requested an Order that the landlord comply with the Act; this referred to her request for return of the deposit.

Issue(s) to be Decided

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

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

Is the tenant entitled to return of the deposit paid?

Is either party entitled to filing fee costs?

Background and Evidence

The tenant responded to a web site advertisement for rental of a unit. The parties agreed to the following facts:

- On August 30, 2010 the tenant sent the landlord a deposit in the sum of \$600.00;
- Retention of the deposit by the landlord was contingent on the tenant viewing the unit and confirming her intention to rent the unit, as supported by email evidence submitted;
- That on August 30, 2010, the tenant viewed the unit with the landlord and confirmed she would rent the unit; and
- That later in the day on August 30, 2010, the tenant changed her mind and decided not to take the unit.

After meeting with the tenant and obtaining the tenant's confirmation that she would rent the unit the landlord processed the on-line deposit payment the tenant had sent her.

The landlord submitted an email sent by the tenant on September 2, 2010, in which the tenant confirmed that she would not move in, as the unit was too small. The tenant also included a request for return of the deposit paid.

The rent was \$1,200.00 per month but the tenant submitted that the landlord had discussed a possible reduction in rent payable.

The landlord was able to rent the unit effective November 1, 2010.

Analysis

Section 16 of the Act provides:

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

I find, from the evidence before me and the testimony given, that on August 30, 2010, the tenant did enter into an agreement to rent the unit. The tenant's subsequent decision to change her mind does not negate the fact that she had reached agreement with the landlord. Therefore, I find that a tenancy was created.

Section 45 of the Act allows a tenant to end a periodic tenancy by giving written notice on the day before the day in the month that rent is due. This did not occur in this case.

As a tenancy was created I find that the tenant accepted the terms of the tenancy, that rent must be paid.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

I find that rent was \$1,200.00; double the amount of the deposit paid. I base this on the testimony of both parties and the absence of any evidence that rent was to be less than \$1,200.00 per month.

As a tenancy was created and the tenant failed to give notice ending the tenancy as required by the Act, I find that the landlord is entitled to unpaid September, 2010, rent in the sum of \$1,200.00.

I find that the landlord is entitled to retain the \$600.00 deposit in partial satisfaction of the claim for unpaid rent

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.

The tenant's claim is dismissed.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$1,250.00, which is comprised of \$1,200.00 in September 2010, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the \$600.00 deposit in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for \$650.00. 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 12, 2011.

Residential Tenancy Branch