



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNR, MNSD, MNDC, MND, ET, OPR, 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, damages to the rental unit, damage or loss under the Act, an Order of possession for unpaid rent and an early end to the tenancy, to retain the security deposit 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.

Preliminary Matters

The parties confirmed that the tenancy ended on January 28, 2011, when the tenant vacated the rental unit. The landlord withdrew the request for an Order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent, damage to the rental unit and damage or loss under the Act?

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2010; rent was \$1,150.00 due on the first day of each month. A deposit in the sum of \$500.00 was paid July 17, 2010.

A copy of the tenancy agreement submitted as evidence indicated the tenant was responsible for all costs associated with utilities including heat and hydro; that utilities were separately metered and that the tenant must place the utilities in his own name.

The tenant did not pay any gas utility costs as he discovered that the gas service was not metered separately from the commercial space downstairs and the 2nd rental unit in the building. The tenant then refused to place his name on the gas service bills. He did pay his own hydro costs.

The landlord stated that the commercial space was not occupied and that the 2nd unit used gas for only the hot water tank. The landlord determined that the gas costs should be reduced by 1/3, to take into account the hot water tank usage by the occupant in the 2nd unit.

The landlord submitted that the tenant owed \$238.17 for December, 2010, and \$173.26 for January, 2011, gas services. Copies of gas bills were submitted as evidence which showed the service address as one unit; the bill did not break down costs between the 2 rental units and the commercial space.

During the hearing the tenant agreed that he did not pay \$400.00 owed of January 2011, rent.

The Application included a claim for a broken window; no verification of this cost was included as evidence; nor was any monetary amount claimed for this item

Analysis

I find, based on the acknowledgement of the tenant, that the landlord is entitled to compensation for unpaid January, 2011, rent in the sum of \$400.00.

Section 6 of the Act provides, in part:

- (3) A term of a tenancy agreement is not enforceable if*
- (a) the term is inconsistent with this Act or the regulations,*
 - (b) the term is unconscionable, or*
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

As the term referencing utility costs, specifically gas usage, indicated that the gas service was separately metered, I find that portion of the tenancy agreement referencing utility costs for gas is not enforceable, as the gas was not separately metered. It is not reasonable for the landlord to present the utilities as separately metered at the start of the tenancy and to then expect the tenant to accept responsibly for bills which could not provide any breakdown of his actual costs incurred.

I have rejected the landlord's submission that she allowed for extra costs incurred by the neighbouring occupant to be deducted from the gas bills, as there is no evidence supporting the amount that should be deducted or ability to determine the exact costs incurred by that occupant. Further, despite the submission that the commercial space was not occupied, it is not reasonable to expect a tenant to accept a term that indicated he would be responsible for his rental unit gas usage, only to then discover the gas utility bill would cover the whole building. Therefore, I find that the term of the tenancy agreement referencing payment of gas utility costs is unenforceable as it does not

clearly communicate the tenant's rights and obligations and that the portion of the claim for gas costs is dismissed.

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

The landlord will retain \$400.00 of the deposit in partial satisfaction of the monetary claim for unpaid January 2011, rent.

As suggested by Residential Tenancy Branch policy, I Order the landlord to return the \$50.00 balance of the deposit, forthwith, to the tenant.

I did not consider the claim for a broken window as this claim was not included in the total monetary Order requested.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$450.00, which is comprised of \$400.00 for January 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain \$450.00 from the \$500.00 deposit paid.

Based on these determinations I grant the tenant a monetary Order for \$50.00; the balance of the deposit held in trust by the landlord. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the monetary claim is dismissed.

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: February 10, 2011.

Residential Tenancy Branch