



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for a Monetary Order for the return of all or part of the security deposit.

By the landlord: as a cross application for a Monetary Order for unpaid rent; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The rental unit consists of a basement suite in a single detached home.

The landlord testified that the tenant signed a tenancy agreement on November 14th, 2010, specifying that the tenancy would start on December 1st, 2010, that the monthly rent was \$825.00, and other terms of tenancy such as utilities. She stated that the tenant agreed, gave her \$412.50 as a security deposit and that she gave him the agreement as receipt for the deposit. She said that on November 16th, the tenant advised her that he had changed his mind and that he wanted his security deposit back. She stated that she had to take time off, re-advertise, and that she found new tenants starting December 1st, 2010. In her documentary evidence, the landlord provided an invoice for advertising in the Vancouver Sun for \$146.72. She stated that she also advertised in another newspaper at a cost of \$68.24. She said that she miscalculated her expenses in her application and clarified her monetary claim as follows:

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|----------------------------|----------|
| - Security deposit: | \$412.50 |
| - Total advertising costs: | \$214.96 |
| - Filing fee: | \$ 50.00 |
| - Total: | \$677.46 |

The tenant did not dispute the landlord's evidence. He stated that he changed his mind about the tenancy because he found that the rental unit was not acceptable and that he no longer had to move out of the place that he was renting. He gave the landlord verbal notice, but stated that he did not enter into a tenancy agreement. The landlord argued that the parties did enter into a tenancy agreement, which was evidenced by the tenant giving her a security deposit.

Analysis

The landlord's recollection of the agreement was that it included fundamental terms of a tenancy such as the monthly rate, the start date, her signature, and receipt for a security deposit. The tenant applied for the return of that deposit once he told the tenant that he would not move into the rental unit.

The *Residential Tenancy Act* defines in part "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit.

Based on the parties' testimony, I am satisfied that they did enter into a tenancy agreement on November 14th, 2010. When the tenant told the landlord that he changed his mind on November 16th, 2010, I find that he broke the agreement, did not provide the landlord with proper notice, and therefore contravened section 45 of the Act concerning giving the landlord notice that is not earlier than one month after the date the landlord receives the notice. Accordingly, the landlord is entitled to keep the tenant's security deposit for the loss of a month's rent, and to recover the costs of advertising.

The landlord provided evidence that she took steps to mitigate her loss by advertising, and that she found new tenants for December 1st, 2010. I find that the landlord is entitled to recover these expenses.

Conclusion

The tenant's application is dismissed. The landlord has established of claim for \$677.46 inclusive of the filing fee. I authorize the landlord to keep the tenant's \$412.50 security deposit and pursuant to section 67 of the Act, I award the landlord a monetary claim for the balance of \$264.90

This Order may be registered in the 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: March 25, 2011.

Residential Tenancy Branch