



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated, and the application for a move-out fee, as that fee has been paid.

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 relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 06, 2010, that the Landlords did not complete a Condition Inspection Report at the start of this tenancy, that the tenancy agreement required the Tenant to pay monthly rent of \$1,700.00 by the first day of each month.

The Landlord and the Tenant agree that this tenancy ended on March 30, 2011 or March 31, 2011. The male Landlord stated that he posted a notice on the door of the rental unit on March 30, 2011, which declared that the Landlord would like to meet with the Tenant on March 31, 2011 at 5 p.m. to "end the tenancy". The Landlord acknowledged that the notice did not specifically declare that they intended to complete

a Condition Inspection Report at that time. The Tenant stated that she did not locate this notice, as she had vacated the rental unit by that date and time.

The Landlord stated that the Tenant paid \$850.00 in rent for March of 2011 on March 10, 2011. The Tenant stated that she paid \$850.00 in rent for March of 2011 on March 06, 2011.

The Landlord and the Tenant agree that the Tenant sent the Landlord a text message, in which she gave the Landlord permission to retain her security deposit of \$850.00, in lieu of the remaining rent due for March of 2011. The male Tenant agreed that she did send a text message but that it did not clearly state that they could keep the security deposit for the remaining unpaid rent. The female Landlord stated that she understood the intent of the text message that was sent but she did not agree to apply the security deposit to the unpaid rent.

I note that the text message was not submitted in evidence, so I am unable to assess the message.

Analysis

Section 26 of the *Act* requires tenants to pay rent when it is due. I therefore find that the Tenant failed to comply with the *Act* when she failed to pay \$1,700.00 in rent that was due on March 01, 2011.

Section 21 of the *Act* stipulates that a tenant must not apply a security deposit or pet damage deposit as rent, unless the landlord gives written consent. I therefore find that the Tenant failed to comply with the *Act* when she applied her security deposit of \$850.00 to her outstanding rent of \$850.00, as she did not have the Landlord's written permission to do so.

I find that the Landlord acted reasonably when the Landlord filed an Application for Dispute Resolution, as a means of ensuring that the security deposit was retained in strict compliance with the legislation. I therefore find that the Landlord is entitled to recover the cost of filing the Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$900.00, which is comprised of \$850.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I hereby authorize the Landlord to retain the security deposit, in the amount of \$850.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$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: April 07, 2011.

Residential Tenancy Branch