



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, 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; for a monetary Order for unpaid rent; to keep all or part of the security deposit; 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 compensation for unpaid rent and utilities; to compensation for removing two bags of garbage; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 31, 2010; that the Tenant was required to pay monthly rent of \$695.00 on the first day of each month; that the Tenant paid a security deposit of \$347.50 on December 17, 2010; that the parties did not enter into a written tenancy agreement; that the tenancy ended on February 28, 2011; and that the Tenant owed rent of \$49.21 when the tenancy ended.

The Agent for the Landlord stated that she was out of town when the Tenant dropped the security deposit at the Landlord's office on December 17, 2010 so the tenancy agreement could not be signed at that time; that she did not bring the tenancy agreement with her when the Tenant moved into the rental unit on December 31, 2010 so the tenancy agreement could not be signed at that time; that the tenancy agreement was not created until January 01, 2011; that the Tenant was supposed to come into the

office to sign the tenancy agreement but she did not do so; and that the Tenant refused to sign the tenancy agreement on January 31, 2011 when she gave her notice to end the tenancy.

The Agent for the Landlord acknowledged that she never presented the Tenant with a copy of the tenancy agreement prior to January 31, 2011 and that they did not discuss all of the terms outlined in the tenancy agreement at any time during this tenancy.

The Tenant stated that she was not aware that the Landlord wanted her to sign a tenancy agreement until January 31, 2011 when she gave her notice to end the tenancy. She stated that she did not sign that agreement because she had decided she did not wish to continue the tenancy and she did not wish to enter into a fixed term tenancy.

The Agent for the Landlord stated that on December 15, 2010 she advised the Tenant that the rent would be \$695.00 plus 30% of the utility bill. The Tenant stated the Landlord advised her that the rent would be \$695.00 per month plus utility charges of \$50.00 per month.

The Agent for the Landlord contends that the fact the Landlord waited for the hydro bill to arrive before attempting to collect a hydro payment supports the Landlord's position that the Tenant was required to pay 30% of the utility bill. She contends that the Tenant would have been required to pay the \$50.00 payment for January at the end of January if the agreement was to pay a monthly fee of \$50.00.

The Tenant submitted a letter from her mother, in which her mother declared that she was present when the Agent for the Landlord told the Tenant the hydro would be \$50.00 per month.

The Landlord is seeking 30% of the hydro costs incurred during the tenancy, which is \$169.22 for the two months of the tenancy. The Tenant contends that she only owes \$100.00 for utility charges for those months.

The Landlord and the Tenant agree that on February 28, 2011 the Tenant gave the Landlord written permission to retain any unpaid rent and hydro charges from the Tenant's security deposit. The parties agree that sometime later in March of 2011 the Tenant specified that the Landlord could retain \$100.00 from her security deposit for hydro.

The Landlord is seeking compensation, in the amount of \$15.00, for removing two bags of garbage. The Agent for the Landlord stated that two bags of garbage were left on the residential property at the end of the tenancy. She stated that she viewed some of the contents of the bag, which included diapers and child's gift wrapping. She concluded that the Tenant left this garbage behind, as the other persons residing on the property did not have children and they told her that the garbage belonged to this Tenant.

The Tenant contends that she removed all the garbage from the residential property. The Tenant submitted a letter from her boyfriend, in which he declared that he helped the Tenant move from the rental unit; that they did not leave garbage behind; and that the occupants of upper rental unit left a pile of garbage.

Analysis

Section 13(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must prepare a written tenancy agreement for every tenancy that commences on or after January 01, 2004. Ideally, this tenancy agreement should be presented to the tenant prior to the start of the tenancy so the parties clearly understand the terms of their agreement.

In these circumstances the Landlord did not enter into a written tenancy agreement with the Tenant prior to the start of the tenancy, although the Landlord had the opportunity to do that when the security deposit was paid on December 17, 2010 or when the Tenant moved in on December 31, 2010.

Although the Agent for the Landlord contends that the Landlord made several attempts to have the Tenant sign the tenancy agreement during the month of January, I note that the Landlord submitted no documentary evidence to corroborate that statement. There is no dispute that the Landlord attempted to enter into a written tenancy agreement on January 31, 2011 and that the Tenant refused to sign the agreement, which is entirely reasonable, given that she had elected to end the tenancy.

As the parties did not enter into a written tenancy agreement, I find that the Tenant was not obligated to comply with the terms of the written tenancy agreement that was prepared by the landlord. I find that both parties were obligated to comply with the terms of the oral tenancy agreement that they entered into in December of 2010.

There is a general legal principle that places the burden of proving a fact on the person who is claiming compensation, not on the person who is denying a fact. In these circumstances, the burden of proving the terms of the oral tenancy agreement rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the Tenant agreed to pay 30% of the utility bills.

I found both parties to be credible witnesses, as their testimony was equally forthright and consistent. I find that the letter from the Tenant's mother corroborates the Tenant's position that she was only required to pay \$50.00 per month for utilities. I find the Landlord's submission that it waited until it received the hydro bill before requesting payment corroborates the Landlord's position that the Tenant was required to pay 30% of the hydro bill.

I find that it is entirely possible that both parties are expressing their honest understanding of the agreement that was reached, which is a pitfall not expressing the

terms of an agreement, in writing, prior to the start of the tenancy. As it is the Landlord's obligation to clearly outline the terms of a tenancy agreement, in writing, I find that any ambiguity that arises from their oral tenancy agreement must be interpreted in favour of the Tenant. I therefore find that the Tenant is obligated to pay a monthly utility fee of \$50.00 per month.

In reaching the conclusion it is important to note that I believe the Landlord intended the utility fee to be 30% of the utility bills, however I am not convinced that the Tenant agreed to that fee. I further note that the tenancy agreement that the Landlord created on January 01, 2011 is of no value to me in determining this matter, as the tenancy agreement had not even been prepared prior to the Tenant moving into the rental unit.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant owes the Landlord \$49.21 in unpaid rent and \$100.00 in unpaid utilities. As the Landlord has failed to establish that the Tenant was required to pay more than \$50.00 per month in utilities, I dismiss the Landlord's claim for compensation for more than \$100.00 in utilities.

I find that the Landlord submitted insufficient evidence to establish that the Tenant left two bags of garbage on the residential property at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's suspicion that the garbage bags belonged to the Tenant. I specifically note that the Landlord did not submit photographs of the contents of the garbage bags nor did she provide me with any evidence that the child's gift wrapping could be directly connected to the Tenant's child, as she did not even know the child's name. I was further influenced by the Tenant's testimony that she did not leave garbage behind and by the boyfriend's declaration that no garbage was left behind. As the Landlord bears the burden of proving the garbage belonged to the Tenant and the Landlord has failed to meet that burden, I dismiss the Landlord's application for compensation for disposing of the garbage.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$149.21 and that the Tenant gave the Landlord written authorization to retain this amount from her security deposit.

As the Landlord has failed to establish that the Landlord is entitled to compensation that is greater than the \$149.21 that it had permission to retain from the security deposit, I find that the Landlord's application has been without merit. I therefore dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

As the Landlord has failed to establish that the Landlord is entitled to compensation that is greater than the \$149.21, I find that the Landlord must return the remainder of the

Tenant's security deposit, in the amount of \$198.29. Based on these determinations I grant the Tenant a monetary Order for the amount \$198.29. 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.

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: June 27, 2011.

Residential Tenancy Branch