



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent and utilities, damages to the rental unit and compensation for damage or loss; to retain the security deposit in partial satisfaction of her monetary claim; and to recover the cost of the filing fee from the Tenant.

Both parties gave affirmed testimony at the Hearing.

The Tenant stated that he received the Notice of Hearing document, which were sent to his mother's house, at the end of January, 2011.

It was established that both parties received the other party's documentary evidence within the time frames allowed.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for the month of December, 2010, unpaid utilities, and the cost of cleaning the rental unit at the end of the tenancy?

Background and Evidence

This tenancy began on June 1, 2010. Monthly rent was \$800.00, due on the first day of each month. The tenancy agreement requires the Tenant to pay 1/3 of utilities. The Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

On December 22, 2010, the Tenant gave the Landlord written notice that he would be ending the tenancy effective January 31, 2011.

On January 1, 2011, the Landlord told the Tenant he was evicted, removed the front door to the rental unit, and refused to accept rent for the month of January. The Tenant removed some of his belongings and when he returned to collect the remainder found the locks had been changed.

The Tenant filed an Application for Dispute Resolution seeking compensation for damage or loss and an Order that the Landlord return the remainder of his personal property. The Hearing took place on January 24, 2011 and reconvened on February 10, 2011. The Dispute Resolution Officer found that the Landlord had significantly interfered with the Tenant's right to quiet enjoyment and that in interfering with the Tenant's right to access his personal property had failed to comply with Section 26(3) of the Act. The Dispute Resolution Officer awarded the Tenant \$1,773.41, which included \$1,600.00 in aggravated damages. The \$400.00 security deposit was not dealt with at this Hearing.

The Landlord gave the following testimony:

The Landlord testified that she was away in December and when she returned, she found that the Tenant had not paid rent for the month of December, 2010. She stated that this was why she evicted him on January 1, 2011. The Landlord seeks a Monetary Order in the amount of \$800.00 for the month of December, 2010.

The Landlord testified that the Tenant did not pay his share of utilities for the month of December in the amount of \$142.10. The Landlord provided copies of utility bills in support of her claim.

The Landlord testified that the Tenant did not clean the rental unit at the end of the tenancy and that she paid a cleaner \$280.00 to clean the rental unit. The Landlord seeks to recover this cost from the Tenant.

The Tenant gave the following testimony:

The Tenant testified that rent was paid for the month of December on November 31, 2010. He stated that he and his roommate paid rent in cash but the Landlord would not issue receipts. The Tenant provided copies of bank statements showing withdrawals from his account and his roommate's account. The bank statements show withdrawals made from both accounts for a period from May 27, 2010 to December 2, 2010.

The Tenant did not dispute that he owed utilities for the month of December, 2010, and stated that he would have paid them but the Landlord did not advise him how much he owed or provide him with copies of the invoices.

Analysis

The Tenant did not dispute the Landlord's claim for unpaid utilities in the amount of \$142.10 and I grant this portion of the Landlord's claim.

I find that when the Landlord illegally evicted the Tenant and then denied him access to the rental unit by changing the locks, she effectively prevented him from cleaning the rental unit at the end of the tenancy. This portion of the Landlord's application is dismissed.

The Landlord did not dispute that the Tenant paid rent in cash during the tenancy. She did not dispute that she did not provide the Tenant with receipts. The Tenant provided copies of bank statements that show withdrawals from his and his roommate's bank accounts, including the end of November. The Tenant testified that these withdrawals were for rent and for his portion of utilities. The bank statements show a history of

withdrawals at the end of a month, or at the beginning of a month, and the pattern and amount is consistent for rent payments for the term of the tenancy. The dates and amounts shown on the bank statements support the Tenant's statement and I find that the Tenant did pay rent for the month of December, 2010. This portion of the Landlord's claim is dismissed.

I accept the Tenant's testimony that the Landlord did not provide the Tenant with copies of the utility invoices. I also accept the Tenant's testimony that had she done so, he would have paid his share. I have dismissed all of the Landlord's application except for her claim for unpaid utilities. Therefore, I find that the Landlord is not entitled to recover the cost of the filing fee from the Tenant.

The Landlord is holding the security deposit in the amount of \$400.00. Pursuant to the provisions of Section 72 of the Act, the Landlord may apply a portion of the security deposit in full satisfaction of her monetary award. I order the Landlord to return the balance of the security deposit in the amount of \$257.90 (\$400.00 - \$142.10) to the Tenant within 15 days of receipt of this Decision.

Conclusion

The Landlord's application for a Monetary Order for unpaid utilities in the amount of \$142.10 is granted. The remainder of the Landlord's application is dismissed without leave to reapply.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply a portion of the security deposit in full satisfaction of her monetary award. I order the Landlord to return the balance of the security deposit in the amount of \$257.90 (\$400.00 - \$142.10) to the Tenant within 15 days of receipt of this Decision.

I hereby provide the Tenant a Monetary Order in the amount of \$257.90 for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 01, 2011.

Residential Tenancy Branch