



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: **OPR, MNDC, MNSD, FF**

Introduction

This hearing was scheduled 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 loss of rent revenue, 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.

Both parties were present at the hearing; the tenant attended 2 minutes after the start of the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

Prior to the tenant entering the conference call hearing the landlord testified that the tenant moved out on May 11, 2011 and that the landlord had possession of the unit on that date. Therefore, the request for an Order of possession was withdrawn. The landlord requested compensation and filing fee costs prior to the tenant's entry to the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for loss of rent revenue?

May the landlord retain the deposit paid by the tenants?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that monthly rent was \$2,500.00 due on the first day of each month. This was a fixed term tenancy that was to end effective April 30, 2011, with the tenant moving out. A deposit in the sum of \$1,750.00 was assumed by the tenant effective August 29, 2010.

The landlord listed the property for sale in early May, 2011.

A copy of the tenancy agreement and fixed term amendments was submitted as evidence.

The tenant stated that on May 11, 2011, he had given the landlord payment in the sum of \$1,878.00 which included:

- 887.00 11 days rent to May 11, 2011;
- 200.00 noise fine;
- 50.00 filing fee; and
- 50.00 toward the landlord's fuel costs.

During the hearing the parties agreed that the balance of the landlord's claim totals \$1,613.00, for May rent revenue.

The landlord stated that on May 12, 2011, he issued a receipt for use and occupancy only, as the tenant had yet to give him the 2nd set of keys. The landlord stated that he expected the tenant to pay the full month's rent owed for May, 2011, and that there was no agreement that the matter was settled on May 11, 2011. The landlord stated that some belongings were left in the unit beyond May 11, 2011.

The tenant testified that when he made the payment on May 11, 2011, the parties had agreed that the matter was settled, that the payment would conclude the claim made within this application and that is why the tenant paid the \$50.00 filing fee. The landlord stated that it was the tenant's choice to pay the filing fee and it was not made at the suggestion of the landlord.

The tenant submitted that he was not going to attend this hearing until his roommate informed him several days ago that in her contact with the landlord over return of the deposit she had been informed that the landlord was proceeding with the hearing. The tenant then submitted late evidence, which included, among other documents; a copy of the cheque issued to the landlord on May 11.

The tenant stated he did return to the unit on May 12 or 13th to complete some additional cleaning for the landlord; although he felt the unit had been reasonably clean on May 11, 2011.

The landlord's application was submitted on May 6, 2011.

Analysis

I have considered the claim for the balance of May rent and find, on the balance of probabilities, that the landlord has not suffered a loss of rent revenue. I have based this decision on the testimony of the parties and the absence of any evidence that the landlord made any efforts to locate new occupants effective May 1 or any date beyond May 1, 2011. The landlord has listed the property for sale.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to the landlord, as the applicant. The real test of the truth of the story of a witness must align with the balance of probabilities and, in the circumstances before me; I find the version of events provided by the tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favour the evidence of the tenant over the landlord.

I am inclined to accept the tenant's version of the facts, in relation to the payment made on May 11, 2011; particularly the fact that the \$50.00 filing fee was paid by the tenant and was then claimed by the landlord at the commencement of this hearing, in the absence of the tenant.

There was no evidence before me of any loss of rent revenue suffered by the landlord. The tenant was to vacate the rental unit by April 30, 2011, and the landlord provided no evidence of any loss of revenue as a result of the tenant remaining in the unit for 11 days. The landlord has been compensated for the 11 days the tenant over-held in the unit and I find that the need for further compensation has not been proven.

Residential tenancy Branch policy suggests that when a landlord claims against the deposit, any balance should be Ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenant is entitled to return of the deposit in the sum of \$1,750.00 and I have issued an Order to that effect.

Conclusion

The application is dismissed.

I find that the tenant is entitled to return of the deposit in the sum of \$1,750.00 and I grant the tenant a monetary Order in that amount. 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 01, 2011.

Residential Tenancy Branch