



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, 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 a monetary Order for unpaid rent, to retain 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. At the start of the hearing I introduced myself and the participants. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

Both parties testified that they sent the other their evidence packages; the tenants acknowledged receipt of the Notice of hearing only, after they had called the landlord on February 21, 2011, to provide their current, out-of-country address. They did not receive the evidence package which had been sent to the address given by the tenants at the February 3, 2011, move-out inspection.

The tenant's testified that they served the landlord with their evidence package via registered mail, which was delivered on June 1, 2011. The landlord stated this evidence had not been received.

As neither party could confirm receipt of the evidence submissions made by the other, I determined that the parties would rely upon oral testimony. The landlord's evidence was not served to the current address provided by the tenants and I accept the tenant's submission that they received the Notice of hearing only.

The tenants served the landlord with their evidence only 2 days prior to the hearing; Rules of Procedure require evidence service at least 5 days before the hearing.

The landlord had applied requesting compensation for unpaid rent; however I have amended the application to reflect the claim for damages, in the form of cleaning.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and cleaning costs?

Is the landlord entitled to retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed on the following facts:

- The tenancy commenced on September 1, 2009;
- Rent was \$1,300.00 due on the first day of each month;
- A deposit in the sum of \$650.00 was paid on August 17, 2009;
- Written notice ending the tenancy effective January 31, 2011, was received by the landlord on December 31, 2010; and
- That a move-out condition inspection report was completed on February 3, 2011.

The landlord stated that the tenants failed to contact the landlord within 10 days of the end of the tenancy to arrange the condition inspection. The failure of the tenants to arrange the condition inspection resulted in a delay in the inspection to February 3, 2011, which the landlord submitted caused a loss of rent for February, 2011.

The tenants acknowledged they received paperwork from the landlord that had contained direction that the tenants arrange the inspection, but they had missed that portion of the instructions. When the tenants did not hear from the landlord on January 31, 2011, they called the landlord on February 1, to arrange a condition inspection. The landlord was not available that date and set a time on February 3, 2011.

When the tenants met with the landlord's agent on February 3, 2011, they agreed to a \$25.00 deduction for some minor cleaning. The agent raised no other issue with the tenants and the male tenant signed the report agreeing to the \$25.00 deduction from the deposit. The tenants continue to agree to a \$25.00 deduction from the deposit.

Analysis

Section 35(2) of the Act requires a landlord to offer tenants at least 2 opportunities to complete a move-out condition inspection report. From the evidence before me the landlord has placed the onus on the tenants to arrange the inspection and neglected to take the initiative, as required by the Act, to provide dates and times to the tenants.

In the absence of compliance with section 35(2) of the Act, I find that the claim the tenants continued to possess the unit and owe rent for February is dismissed. I find, on the balance of probabilities, that the tenants did vacate on January 31, 2011; that the

tenancy ended on that date and that the only reason an inspection report was completed was due to the efforts of the tenants; not the landlord.

Therefore, the landlord's claim for February rent is dismissed.

The landlord is entitled to retain \$25.00 from the deposit for cleaning costs, as agreed to by the tenants on February 3 and during this hearing.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any residue of the deposit should be Ordered returned to the tenants; I find that to be a reasonable stance. Therefore, I Order the landlord, forthwith, to return the balance of the deposit in the sum of \$625.00 to the tenants. The tenants provided their forwarding address again, during the hearing.

I decline the filing fee costs to the landlord, as the tenants had previously agreed to allow a \$25.00 deduction from the deposit.

Conclusion

The landlord's claim is dismissed.

The landlord is entitled to deduct \$25.00 from the deposit, as agreed to by the tenant's on February 3, 2011.

The tenants are entitled to return of the balance of the deposit in the sum of \$625.00.

Based on these determinations I grant the tenants a monetary Order for \$625.00. 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 03, 2011.

Residential Tenancy Branch