



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On May 09, 2011 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution. It is apparent from information on the Application for Dispute Resolution that the Landlord is also seeking compensation for unpaid rent and the Application for Dispute Resolution has been amended accordingly.

On August 09, 2011 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit.

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.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to unpaid rent; how the security deposit should be dispensed of; and whether either party is entitled to recover the fee for the cost of filing their Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they communicated via email about renting this rental unit; that on April 10, 2011 or April 11, 2010 the parties verbally agreed that the Tenant would rent the rental unit; that the Tenant signed a written agreement in which

she agreed to rent the rental unit; that the tenancy was to begin on May 01, 2011; that the Tenant was required to pay monthly rent of \$750.00 on the first day of each month; and that the Tenant paid a security deposit of \$375.00.

The Landlord and the Tenant agree that on April 21, 2011 the Tenant provided the Landlord with notice, via email, of her intent not to move into the rental unit. The Tenant stated that she elected not to move into the rental unit in part because of personal financial difficulties and in part because she had some concerns about the use of the rear yard. The parties agree that the Tenant provided the Landlord with her forwarding address, via email, on May 04, 2011.

The Landlord stated that she advertised the rental unit in April and that on April 30, 2011 she was able to find a new tenant for a tenancy that was to begin on June 01, 2011. The Landlord submitted evidence to show that she entered into a new tenancy agreement on April 30, 2011.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a tenancy agreement, in which the Tenant agreed to pay monthly rent of \$750.00 on the first day of each month for a tenancy that was to begin on May 01, 2011; that the Tenant paid a security deposit of \$375.00; and that on April 21, 2011 the Tenant provided the Landlord with written notice of her intent not to move into the rental unit.

Section 45 of the *Residential Tenancy Act (Act)* stipulates that a tenant may end a tenancy by providing the landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. I find that the earliest effective date of the notice to end tenancy that was given to the Landlord on April 21, 2011 was May 30, 2011.

Section 26 of the *Act* requires tenants to pay rent when it is due whether or not the Landlord complies with the *Act*. As the tenancy was not properly ended until May 30, 2011, I find that the Tenant was required to pay rent on May 01, 2011. I therefore find that the Tenant owes the Landlord \$750.00 in rent from May.

In making this determination I gave no consideration to the Tenant's personal financial difficulties or that she was concerned about a dispute over the use of the back yard, as those issues did not negate her obligation to provide proper notice to end this tenancy agreement.

I find that the Landlord made reasonable efforts to find a new tenant and that it was reasonable for the Landlord to enter into a tenancy agreement which was to begin on June 01, 2011. I find that it was reasonable for the Landlord to assume that she would be unable to find a new tenant for May 01, 2011 when she entered into this agreement on April 30, 2011.

Conclusion

I find that the Landlord has established a monetary claim of \$800.00, which consists of \$750.00 in rent and \$50.00 in compensation for the fee paid to file the Landlord's Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit of \$375.00 in partial satisfaction of this monetary claim. On this basis I grant the Landlord a monetary Order for the amount of \$375.00. 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.

I dismiss the Tenant's application for the return of the security deposit, as the Landlord has established a claim to it.

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: August 18, 2011.

Residential Tenancy Branch