



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to cancel two Notices to End Tenancy, one for Cause and the other for the Landlord's use of the property. As well the Tenant applied for monetary compensation for loss or damage under the Act and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 6, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord's absences.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?
2. Is there a loss or damage under the Act and if so how much?
3. Is the Tenant entitled to monetary compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started in December, 2008 as a month to month tenancy. Rent is \$350.00 per month payable in advance of the 1st day of each month.

The Tenant's Advocate said the Tenant is withdrawing the applications to cancel the Notices to End Tenancy as the Tenant moved off the rental pad on August 21, 2011.

The Tenant's Advocate continued to say the Tenant is requesting a monetary order for the amount found in the previous hearing (\$1,841.00/file # 774832), less \$350.00 of rent deducted for August, 2011 resulting in a claim of \$1,491.00. The Tenant is requesting this amount because the previous hearing instructed her to collect the overpayment of rent that she has made to be deducted from future rent payments. As the tenancy has ended the Tenant will not be making any further rent payments and the Tenant is requesting a monetary order for the remaining balance of \$1,491.00.

As well the Tenant's Advocate requested the filing fee for this proceeding of \$50.00 and the filing fee for the previous hearing in the amount of \$50.00.

Analysis

I accept the Tenant's evidence and the testimony of the Tenant's advocate that the tenancy has ended making it impossible for the Tenant to recover the Tenant's overpayments of rent by deducting it from future rent payments, therefore I find for the Tenant and award a monetary order for the balance of rent overpayments in the amount of \$1,491.00.

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee for this proceeding of \$50.00 from the Landlord. I dismiss the Tenant's request to collect the filing fee for the previous hearing of \$50.00 as immaterial to this hearing.

Conclusion

A Monetary Order in the amount of \$1,541.00 has been issued to the Tenant. A copy of the Orders must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Residential Tenancy Branch