



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, 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 requesting an Order of possession, compensation for unpaid rent, damage or loss under the act, 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. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. 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 relevant evidence and testimony provided.

Preliminary Matters

The parties agreed that on July 28, 2011, the landlord received a written note from the tenants indicating they would vacate the rental unit on August 31, 2011. The tenants asked the landlord to apply the deposits paid to the August rent owed. The tenants vacated on August 31, 2011; therefore, an Order of possession is not required.

The landlord stated that she wished to amend the application as she has not suffered damage or loss under the Act. The landlord wishes to submit a future application in relation to damage to the rental unit. The landlord wishes to apply the deposits against any future claim in relation to damage to the unit.

Issue(s) to be Decided

Is the landlord entitled to unpaid August rent in the sum of \$1,500.00?

Is the landlord entitled to the filing fee in the sum of \$50.00?

Background and Evidence

The parties agreed that the tenancy commenced on September 1, 2010, and was to end on August 31, 2011. The tenants gave Notice on July 28, 2011, that they would vacate on August 31, 2011. Rent was \$1,500.00 per month, due on the first day of each month. Deposits in the sum of \$1,500.00 were paid.

The tenants agreed that the landlord is owed \$1,500.00 for August, 2011, rent and that they had asked the landlord to sign their July 28, 2011, letter, agreeing to retain the deposit for the rent owed. The landlord did not sign accepting the offer as she now wishes to claim against the deposit for damage to the rental unit.

The tenants confirmed that they have yet to give the landlord their forwarding address in writing. The landlord personally served the female tenant with Notice of this hearing, at her place of employment.

Analysis

The tenants have confirmed they did not pay August 2011, rent in the sum of \$1,500.00; therefore, I find that the landlord is entitled to compensation in that amount.

I find that the landlord was within her rights to decline the tenant's offer, that the deposits be retained in satisfaction of August rent; as provided by section 21 of the Act.

As the tenant's have failed to provide their forwarding address in writing, they have yet to initiate the provisions of the Act that would allow consideration of the deposit in satisfaction of the landlord's current claim. I have determined that I will not apply section 72 of the Act; to set off the amount owed to the landlord against the deposits, as the tenant's have yet to provide their written forwarding address. Therefore, I find that the landlord is at liberty to retain the deposit in trust until it is disbursed as required by the Act.

The landlord is at liberty to submit a claim for damage to the rental unit and may choose to claim against the deposit at that time or within 15 days of receipt of a written forwarding address.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,550.00, which is comprised of \$1,500.00 August, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$1,550.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord withdrew her request requesting compensation for damage or loss under the Act and retention of the deposit.

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: September 20, 2011.

Residential Tenancy Branch