



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to a verbally amended application by the landlord, during the hearing, for a Monetary Order to recover partial unpaid rent for June 2011, and rent for August 2011, inclusive of recovery of the filing fee associated with this application. I accept the landlord's further sought an order to retain the security deposit as set off, or partial satisfaction of the monetary claim. The landlord applies for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and sworn testimony in respect to their claims and to make prior submission to the hearing and fully participate in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for unpaid rent for June and August 2011?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony of the landlord and the tenant is as follows. There is no written tenancy agreement which applies. The tenancy began March 01, 2011 and the tenant vacated August 15, 2011. Rent in the amount of \$930 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$465 which the landlord still holds.

The landlord received verbal intent / notice to vacate from the tenant on August 03, 2011 following a period over the previous ten days in which there was water ingress into the unit due to a compromised drain system. As a result, the landlord testified that on July 30, 2011 she was verbally advised by the tenants of mould along a wall and undertook to remediate the mould issue over the following several days. The tenant's testified they were given advice that they could give the landlord "short notice" (notice not in accordance with Section 45 of the residential Tenancy Act) due to mould issues identified with the water ingress. On August 04, 2011 the landlord advised the tenants she would accept from them a notice to vacate – which the tenant provided via email on August 05, 2011 – stating they would vacate by August 15, 2011. The landlord claims she accepted the tenant's "short notice" for September 01, 2011, as if it was in accordance with a valid Notice to Vacate. The landlord seeks the rent for the month of August 2011 in the amount of \$930. The tenant claims that they are only obligated to pay until August 15, 2011, because they gave the landlord "short notice".

The landlord testified that the tenant owes rent arrears of \$278 for the month of June 2011. She claims this amount is the result of deductions to the rent payable each month, verbally agreed by the parties, would result, in exchange for carpet replacement and some painting upgrades – along with accompanying receipts. The terms of the proposed rental offsets for June 2011 rent were not put into writing. The tenant testified that the verbal agreement was inclusive of labour for the installation of some carpeting (in the amount of \$220) – with which the landlord disagrees. The landlord claims that the tenants asked in May 2011 to replace the carpeting – to which she obliged. The tenant disputes the landlord's claims, testifying the landlord requested them to arrange for new carpeting to be installed, along with some painting, in support of selling the house. The tenant provided a copy of the invoice for carpet, install labour and taxes.

Analysis

Based on the relevant sworn testimony of the landlord and the tenant, and on the preponderance of their submitted document evidence, **I find** the following relevant to this matter on the balance of probabilities.

In respect to the issues pertaining to the rent for June 2011, I find that in the absence of agreement by the parties or evidence of an agreement by the parties, I will look to the fact that the landlord has gained all benefit from the installation of the new carpeting – whereas the tenant has gained no benefit from the installation of the new carpeting. Therefore, I find that the landlord is responsible for the cost of installing the carpeting in question. I grant the tenant a credit towards arrears of rent for June 2011 in the amount of \$220 for installation labour and \$47.40 in sales taxes. As a result, I find the landlord is entitled to the balance of rental arrears for June 2011 in the amount of **\$10.60**.

In respect to the rent for August 2011, I find that Sections 44 and 45 of the Residential Tenancy Act (the Act) prescribe how a tenancy ends and the required form of the tenant's Notice for ending the tenancy. The parties can consult the relevant sections of the Act at www.rto.gov.bc.ca . I find no evidence in this matter that the tenants provided the landlord with valid Notice to End the tenancy as prescribed by the Act. Further, rent is due when it is payable. Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As a result, I find the landlord is entitled to rent for August 2011 in the amount payable under the tenancy agreement, **\$930**.

As the landlord has been partially successful in their application, the landlord is entitled to recovery of their filing fee in the amount of **\$50**, for a total entitlement of **\$990.60**. The security deposit of \$465 will be off-set from the award made herein.

Conclusion

I Order that the landlord may retain the security deposit of \$465 being held, and the landlord is being given a Monetary Order under section 67 of the Act for the balance in the amount of **\$525.60**. If necessary, this order may be filed in the 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*.