



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and for unpaid rent or utilities; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. Pursuant to a written agreement, the tenancy started in June 2010. The rent was \$875.00 per month and the tenant paid a combined sum of \$875.00 for the security and pet damages deposits.

The landlord testified that the tenant told him that he was breaking up with his girlfriend, that he lost his job and was encountering financial hardships that would prevent him

from paying the rent. The landlord said that it would appear for a while that the tenant was going to receive family assistance, however no rent arrears were paid. He stated that he went to the rental unit on or about February 14th, 2011, discovered that the tenant had left, and that the tenant did not give him any notice.

The landlord said that the tenancy agreement stated that utilities were to be paid by the tenant, and that the tenant did pay until September 2010. The landlord submitted a monetary claim as follows:

- Unpaid rent for December 2010: \$ 475.00
- Unpaid rent for January 2011: \$ 875.00
- Unpaid rent for February 2011: \$ 875.00
- Unpaid rent for March 2011: \$ 875.00
- Unpaid utilities: \$ 991.55
- Sub-total: \$4091.55

In his documentary evidence, the landlord provided copies of BC Hydro utility charges from September 2010 to February 2011 in support of his claim for unpaid utilities.

The tenant testified that he gave the landlord post dated cheques for rent and that he told the landlord not to cash them because he did not have the funds in his account. He stated that the landlord cashed the cheques anyhow, and put his account in overdraft for \$200.00. The tenant said that he paid the landlord as best he could in cash to reconcile his debt. Concerning utilities, the tenant said that he never saw a utility bill.

The landlord said that he never received a dime from the tenant, with the exception of \$400.00 towards December rent.

The tenant could not recall exactly when he left the rental unit, and could not provide any details on how he paid the landlord, other than stating that he paid him in full shortly before moving out.

The landlord argued that he did not cash the cheques; he said that he went to the bank and was informed that there were no funds in the account before he completed the transactions.

Analysis

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The tenant provided no documentary evidence to support his oral submissions. I also found the tenant's testimony vague and very non-specific, given the circumstances. On the evidence I find the landlord's testimony more reliable. Absent any substantive proof to persuade me otherwise, such as receipts, account transactions or withdrawals, the tenant has provided no grounds to support his claim that he paid the landlord in cash. I accept that the landlord has not been compensated for unpaid rent. The tenant left without giving proper notice; for the above noted reasons I find that the landlord is entitled to a monetary order as claimed.

Concerning utilities, the tenant claims that he never saw an invoice; however, it is apparent from the parties' testimony that the tenant had no trouble paying utilities until he ran into financial hardships. On that basis I find that the tenant failed to pay as he did previously and that the landlord is entitled to recover the loss for unpaid utilities.

Conclusion

The landlord established a claim of \$4091.55. I authorize the landlord to retain the tenant's \$875.00 security and pet damage deposits for a balance owing of \$3216.55. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee.

Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$3266.55.

This Order may be registered 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*.

Dated: October 19, 2011.

Residential Tenancy Branch