



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt was scheduled for 11:00 on this date to deal with cross applications for Dispute Resolution filed by both the landlord and the tenants. The landlord applied for a Monetary Order for unpaid rent and authorization to retain the security deposit. The tenants applied for return of the security deposit. The landlord appeared at the hearing; however, the tenants did not appear despite leaving the teleconference call open until 11:20 a.m.

The landlord provided a letter from the tenants' lawyer dated June 29, 2011 and in that letter the landlord was instructed to return the tenants' security deposit to the lawyer's office. The landlord served the tenants with his Application for Dispute Resolution via registered mail sent to the lawyer's office. The landlord confirmed that he has received no other forwarding address from the tenants. The landlord provided a registered mail receipt and tracking number as proof of service.

The tenants' lawyer provided a letter to the Residential Tenancy Branch dated September 20, 2011. In that letter the tenants' lawyer indicated that he would not appear at the hearing due to a scheduling conflict but that the tenants would appear and seek an adjournment. I noted that the lawyer's letter of September 20, 2011 cites the file no. assigned to the landlord's Application for Dispute Resolution.

The landlord confirmed that he was served with the tenant's Application for Dispute Resolution and since the tenants did not appear at the hearing I dismiss the tenants' application without leave to reapply. I deemed the tenants sufficiently served with the landlord's application pursuant to section 71 of the Act and I proceeded to hear from the landlord without the tenants present.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord authorized to keep all or part of the security deposit?

Background and Evidence

The landlord provided the following verbal testimony during the hearing. On June 24, 2011 the landlord collected a \$645.00 security deposit from the tenants for a tenancy set to commence July 1, 2011. The parties agreed that the monthly rent was \$1,290.00 payable on the 1st of every month. The parties discussed the building's pet policy and the tenants were informed that they were allowed one cat but no dogs. The landlord stopped showing the unit to prospective tenants.

The landlord further submitted that on June 27, 2011 the female tenant phoned him and told the landlord they were adopting a dog and would not be able to move into the rental unit. The landlord proceeded to advertise the rental unit and secured new tenants starting August 1, 2011.

In early July 2011 the landlord received a letter from the tenants' lawyer dated June 29, 2011. The letter indicated that the tenants were of the position that if the lease was not finalized by June 27, 2011 the deposit would be refunded to the tenants. The tenants were of the position the agreement "fell through". The landlord responded by filing his Application for Dispute Resolution on July 12, 2011 seeking a Monetary Order for loss of rent for July 2011 and authorization to retain the security deposit.

The landlord testified that there was no agreement that the parties could decide to not fulfill the tenancy agreement.

The landlord provided a copy of the receipt he issued to the tenants on June 24, 2011; the tenant's driver's license number and BC identification number he was provided by the tenants ; and, a copy of an advertisement for the rental unit dated July 5, 2011.

Analysis

Based on the above evidence before me, and on the balance of probabilities, I find as follows.

Section 20 of the Act prohibits landlords from collecting a security deposit at any time other than when a tenancy agreement is entered into. Section 1 of the Act defines a tenancy agreement to include written or oral, express or implied, agreements between a landlord and a tenant with respect to possession of a rental unit. I am satisfied that there was a verbal tenancy agreement reached between the parties on June 24, 2011 for a tenancy set to commence July 1, 2011 for the monthly rent of \$1,290.00 as evidence by the payment of the \$645.00 security deposit by the tenants.

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement was entered into, whether or not the tenant ever occupies the rental unit. Section 45 of the Act provides for ways a tenant may end a tenancy and section 52 requires that all Notices to End Tenancy require the party ending the tenancy to give the other party written notice. I find the tenants were obligated to fulfill the terms of their tenancy agreement by paying rent July 1, 2011 and the tenants violated the tenancy agreement and the Act by failing to pay rent or give sufficient written notice to end the tenancy.

In light of the above, I am satisfied the landlord suffered a loss of rent for the month of July 2011 based upon the tenants' violation of the Act and tenancy agreement. Therefore, I award the landlord the loss of rent of \$1,290.00 he is seeking plus the \$50.00 filing fee he paid for this application. I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the landlord's award and provide the landlord a Monetary Order calculated as follows.

July 2011 rent	\$ 1,290.00
Filing fee	50.00
Less Security Deposit received	<u>- 645.00</u>
Monetary Order for landlord	\$ 695.00

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit in partial satisfaction of the landlord's claims against the tenants. The landlord has been provided a Monetary Order for the balance remaining of \$695.00 to serve upon the tenants.

The Tenants' Application is dismissed without leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 12, 2011.

Residential Tenancy Branch