



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This hearing dealt with an application by the tenant for return of the security deposit and other. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy was to begin November 1, 2011 with monthly rent of \$1500.00 and the tenant paid a security deposit of \$800.00.

The tenant testified that the rental unit was viewed on October 19, 2011 and that a tenancy agreement was entered into under the conditions that the landlord complete repairs in the rental unit. The tenant stated that the landlord requested an \$800.00 security deposit, \$750.00 for ½ months rent and a \$1500.00 postdated cheque for the November 2011 rent.

The tenant stated that he picked the keys up from the landlord on October 25, 2011 and went to the rental unit on October 26, 2011. The tenant stated that when in the rental unit on October 26, 2011 he discovered that the landlord had not fulfilled their promise to complete repairs in the unit and the tenant advised he landlord by phone that he would not take possession of the rental unit.

The tenant stated that he provided the landlord with his forwarding address by email on October 31, 2011 however the landlord maintains that she was never in receipt of this email.

The landlord testified that the tenant came to view the rental unit on October 19, 2011 and entered into a tenancy agreement for the rental unit at that time. The landlord stated that she never asked for an \$800.00 security deposit but that as the tenant had written a cheque for that amount she would make an adjustment in the future.

The landlord stated that on October 26, 2011 when the tenant called to complain that the promised repairs had not been done, the landlord sent a handyman to the rental unit that same morning and all repairs requested by the tenant were completed.

The landlord stated that because of the tenant's actions she could not secure new tenants for November 2011 and suffered a loss of \$1500.00 in rental income. The landlord stated that she had kept the tenant's security deposit to cover the loss of rent.

The landlord commented that she had to get new keys for the rental unit as the tenant had stated that he would not return the keys until the security deposit was returned. The tenant responded by saying that he would drop the keys off for the landlord today at the concierge's desk.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of the security deposit.

The tenant did not take possession of the rental unit and a landlord may not keep a tenant's security deposit without written consent from the tenant. The landlord understands that to claim against a security deposit or to make a claim for loss a landlord is required to bring their own application forward through this office.

Accordingly I find that the tenant is entitled to a monetary order for \$800.00

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for \$800.00 in return of the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$850.00**.

If the amount is not paid by the landlord(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 25, 2012

Residential Tenancy Branch