



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, (MND), (MNDC), MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord's application included the incorrect surname of one of the Tenants which is obvious from the copy of the tenancy agreement provided by the Tenants as evidence at the hearing. Consequently, the style of cause is amended to correct the surname of G.M.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on June 1, 2011. The Landlord said the tenancy ended on September 30, 2011 however the Tenants claim the tenancy ended on October 31, 2011. Rent was \$800.00 per month payable in advance on the last day of the preceding month. The Tenants paid a security deposit of \$400.00 at the beginning of the tenancy.

The Landlord claims that the Tenants did not pay rent for August and September 2011. The Landlord said the Tenants paid their rent by depositing the funds to his bank account however he did not provide any of his banking records as evidence at the hearing. The Tenants claim that they paid rent for August and September 2011 but admitted that they did not pay rent for October, 2011. The Tenants said they obtained receipts from their bank yesterday that show these payments.

Analysis

The Landlord claimed that the Tenants did not pay rent for August and September 2011 however, the Tenants denied this. Neither party provided any documentary evidence to

support their position and both parties sought leave at the hearing to file their documentary evidence after the hearing.

RTB Rules of Procedure 3.5 and 4.1 say that any evidence upon which a Party intends to rely at the hearing must be served on the other Party and the Residential Tenancy Branch **at least 5 days prior to the hearing**. If a Party does not provide their evidence to the other party and the Residential Tenancy Branch prior to the hearing, the Dispute Resolution Officer may refuse to accept that evidence pursuant to Rule of Procedure 11.5(b).

I find that the documents both Parties sought to file after the hearing were documents that were either in their possession or could have been obtained prior to the hearing. I also find that the Parties should reasonably have known that the documents in question (ie. banking records) would be necessary for the hearing to support their respective positions. Consequently, as the Parties have had over 2 months to provide these records for the hearing, I declined to accept this late evidence from either of them.

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that there are rent arrears as alleged. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, ***I find that the Landlord has not provided sufficient evidence to show that there is any unpaid rent.*** However, the Tenants admitted that they did not pay rent for October 2011 and did not have the Landlord's consent to withhold it and on that basis, I find that the Landlord is entitled to recover unpaid rent of \$800.00.

The Tenants claimed that they withheld their rent for October 2011 because they did not have heat or hot water. However, I find that the Tenants were not entitled to withhold their rent unless they first had an Order from the Residential Tenancy Branch authorizing them to do so (and I find that they did not have such an Order). Consequently, if the Tenants are now seeking to recover compensation for the loss of an amenity included in their rent, they must file their own application for dispute resolution to make that claim. In the absence of such an application from the Tenants during this hearing however, I cannot consider that issue.

As the Landlord provided no reliable evidence at the hearing and would not have been successful in this matter but for the admission of the Tenants, I find that this is not an appropriate case to order that the Tenants bear the cost of the \$50.00 filing fee he paid for this proceeding and that part of the Landlord's application is dismissed without leave to reapply.

I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$400.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$400.00.

Conclusion

A Monetary Order in the amount of **\$400.00** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: February 01, 2012.

Residential Tenancy Branch