



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MN, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order allowing the landlord to keep a portion of the security deposit; and
3. An Order to recover the filing fee pursuant to Section 72.

Both parties appeared at the hearing of this matter. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Background and Findings

Monetary Order

The landlord presented utility invoices which she says the tenants have not paid. The landlord has calculated that the tenants' share of the utilities over the course of the tenancy is \$445.83. The landlord produced the Tenancy Agreement signed by the parties in which the tenants agreed to be "...responsible for 50% of utilities costs (gas and electricity)."

The tenant agreed that he signed the tenancy agreement and agreed that he was responsible for 50% of the utility costs. However, the tenant argues that he did not receive copies of these invoices until the end of the tenancy and he believes that because of the delay in giving him the invoices he should not have to pay them. Further, the tenant says that the heating system did not work properly and he did not have control of the heating system and the costs were excessive. In addition, the tenant argued that he believed he was entitled to recover his full deposit because of the "...unsanitary conditions we were forced to live in for 5 months..." making reference to mice and mice droppings in the rental unit.

The landlord admitted that she did not provide all of all of the invoices during the course of the 6 month fixed term tenancy. The landlord believed it would be sufficient to supply

copies of the invoices at the end of the fixed term on February 1, 2012 at which time the tenants were required to move out of the residential unit. Once the landlord had received all of the invoices she emailed the tenants on February 14, 2012 advising them that their share of the utilities for the duration of the tenancy was \$445.83 which she calculated to be approximately \$73.30 per month for electricity and gas. The landlord also suggested that she deduct this sum from the security deposit of \$600.00 paid on August 1, 2011 and return the balance. The tenant responded that he had researched his rights and he knew that the deposit did not belong to the landlord and she could not make any deductions. The tenant stated further that the landlord's right to the deposit had been extinguished because she had not prepared Condition Inspection Reports.

Upon having the tenants' response to her request to be allowed to deduct the utilities from the security deposit the landlord filed an Application for Dispute Resolution on February 17, 2012. The landlord offered that this was necessary in order to ensure that she kept within the 15 day time limit set out in the Act with respect to landlord's seeking to retain deposits.

Findings

The landlord applies for a monetary order in the sum of \$445.83 plus the \$50.00 filing fee. It is clear from the evidence submitted that the tenants agreed to pay half the costs of the utilities. While providing copies of the invoices in bulk at the end of a tenancy rather than as they were received is not ideal, it does not negate the fact that the tenants agreed to pay 50% of the utilities.

With respect to the tenant's arguments that the utility costs may be excessive due to malfunctioning equipment I find that the tenants have failed to bring sufficient evidence to prove this point and I do not find that \$73.30 per month for gas and electricity for a basement suite to be excessive.

Overall I find that the landlord has supplied sufficient evidence to prove her claim and I will grant her a monetary award in the sum of \$445.83.

The landlord has requested to retain part of the security deposit to cover the utility costs. The tenant argues that security deposit cannot be retained without the tenants' permission and this is true. However, when tenants refuse their permission landlords may make an application seeking an Order allowing them to retain the deposit which is the case here.

In addressing the tenant's argument that the landlord's right to claim against the deposit has been extinguished, I agree that it has been extinguished as the landlord acknowledged that she did not perform condition inspections of the unit at the start or at

the end of this tenancy and produce the required reports. However, while the Act provides that the landlord's right to claim against the deposit is extinguished, the Act does not prohibit the landlord from making a monetary claim against the tenant and section 72(2)(b) of the Act permits the landlord to deduct a monetary award from the security deposit. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord.

As the landlord has successful in her claim I will therefore allow her to recover the \$50.00 filing fee paid for this application.

Total monetary award in favour of the landlord \$495.83. The landlord holds a deposit of \$600.00 paid on August 1, 2011 with no interest having been accrued. I direct the landlord to deduct this sum from that deposit and return the balance of \$104.17 to the tenants forthwith.

Should the landlord fail to return this sum to the tenants the tenants are provided with a monetary Order in the sum set out above enforceable as any Order of the Provincial Court of British Columbia.

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: April 23, 2012.

Residential Tenancy Branch