



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, SS

Introduction

This hearing was convened in response to an application filed by the landlords seeking:

1. A monetary Order;
2. An Order to be allowed to retain the security deposit;
3. An Order to be allowed to serve documents by way of substituted service; and
4. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

The landlord served documents by way of registered mail which is an approved form of service and Order for substituted service is not required and the application for substituted service is therefore withdrawn.

Issue(s) to be Decided

Has the landlord met the burden of proving his claims?

Background and Evidence

The evidence is that the parties entered into a one year fixed term tenancy set to end on August 31, 2012 at which time the tenant was to vacate the premises. Rent was fixed at \$1,300.00 per month and the tenant paid a security deposit of \$650.00 and a "utilities" deposit of \$100.00.

The parties agree that the tenant vacated the rental unit sometime in June and that the tenant did not pay rent for either July or August, 2012.

On July 22, 2012 the parties prepared a condition inspection report which the tenant signed agreeing that the landlord could keep his security deposit of \$650.00. the tenant now says he did not mean to agree to this and he asked for a revision but the landlord refused.

The landlord testified that he and the tenant both tried to re-rent the premises without success. The landlord now claims rent to the end of the fixed term that is \$1,300.00 for each of July and August for a total rent of \$2,600.00. The landlord also claims \$52.63 to replace the rental unit key and the landlord seeks to retain the security deposit. The landlord also sought additional costs for registered mail to pursue this claim and recovery of the filing fee.

The tenant testified that he returned the keys and that he has a witness who can attest to this. The tenant also noted that he paid a utilities deposit in the sum of \$100.00 which he would like returned.

Analysis

The parties entered into a fixed term tenancy however the tenant vacated 2 months prior to the end of this fixed term without paying rent to the end of the fixed term. I accept that both parties attempted to re-rent the premises without success; further I am satisfied that the landlord attempted to mitigate his damages. I therefore find that the tenant should pay rent until the end of the fixed term as he originally agreed to do. I will therefore award the landlord the sum of \$1,300.00 for each of July and August 2012 for total rent in the sum of \$2,600.00. As the landlord holds a deposit of \$750.00 I will allow the landlord to retain that sum and I will deduct that sum from the award made herein.

With respect to the landlord's claim for recovery of the costs of replacing the key the tenant says he returned the key. The testimony of the parties is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events and the party making the claim does not supply sufficient evidence to support his version of events then the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here and I therefore dismiss the landlord's claim for the costs of replacing the key.

The landlord has also made a claim for recovery of costs to bring this action. The only costs I am able to award are the cost of the fee paid for this application. I will allow the landlord to recover the \$50.00 he paid to file this claim but I dismiss the landlord's claim for other fees associated with bringing this claim.

Conclusion

Calculation of total Monetary Award

Rental Arrears for July and August	\$2,600.00
Less Security and Utility Deposit (no interest accrued)	-750.00
Total Monetary Award	\$1,900.00

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order 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: September 17, 2012.

Residential Tenancy Branch