



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD, FF / MNDC, MNSD

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlords for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and the double return of the security deposit. Both parties attended the hearing and gave affirmed testimony.

In response to an application by the tenant, a previous hearing was held in the dispute between these parties on August 22, 2012. Pursuant to a decision issued by that same date, an order of possession was issued in favour of the landlords; the order of possession arose from the landlords' issuance of a 10 day notice to end tenancy for unpaid rent for August which was dated August 2, 2012. Thereafter, the landlords filed an application for dispute resolution on August 8, 2012, seeking, in addition to other things, to retain the tenant's security deposit. However, during the hearing of August 22, 2012, only the tenant's application was before the arbitrator.

As the tenant has now vacated the unit, I consider the landlords' application for an order of possession to be withdrawn. Further, the parties agree that rent in the amount of \$575.00 for August has still not been paid.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy

which began on July 1, 2012. Monthly rent of \$575.00 was due and payable in advance on the first day of each month, and a security deposit of \$287.00 was collected. As earlier noted, the parties agree that rent in the amount of \$575.00 remains unpaid for August 2012.

Following the landlords' service of an order of possession on August 22, 2012, the landlords returned to the unit approximately 48 hours later on August 24, 2012 and changed the locks to the unit. The tenant reluctantly vacated the unit on August 24, 2012, leaving foodstuffs and the bulk of her possessions within, and moved in temporarily with her married son. Arising from this, the tenant seeks compensation of \$200.00 for foodstuffs she was unable to remove from the unit on August 24, 2012 and which later had to be discarded, in addition to \$300.00 to assist with costs arising from living with family.

By mutual agreement, the tenant returned to the unit on September 2, 2012 in order to remove her possessions. The tenant provided the landlords with a forwarding address at that time for the purposes of returning her security deposit.

Following efforts undertaken to clean the unit, the landlords re-rented the unit effective September 15, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the respective applications and my findings around each are set out below.

LANDLORDS' Application:

\$575.00: unpaid rent for August. As the parties do not dispute that this rent remains unpaid, I find that the landlords have established entitlement to the full amount claimed.

\$287.50: unpaid rent / loss of rental income for the period September 1 to 14, 2012. I find that even while the tenant vacated the unit on August 24, 2012, the bulk of her possessions remained within the unit until September 2, 2012. I also find that as a result of efforts made by the landlords to mitigate the loss of rental income, new renters were found effective September 15, 2012. In the result, I find that the landlords have established entitlement to the full amount claimed.

\$50.00: *filing fee*. As the landlords have succeeded with their application, I find that they have established entitlement to recovery of the full filing fee.

Sub-total entitlement: \$912.50.

As previously noted, the landlords filed their original application for dispute resolution on August 8, 2012, and their application included seeking permission to retain the tenant's security deposit. Thereafter the landlords submitted an amended application on October 19, 2012, in which the monetary aspect of the application was increased. In the result, I find that the landlords applied in a timely fashion to retain the tenant's security deposit, such that the tenant has not established entitlement to its double return.

I order that the landlords retain the security deposit of \$287.00, and I find that the
landlords' subtotal entitlement to compensation is therefore amended to \$625.50*
(\$912.50 - \$287.00).

TENANT'S Application:

\$574.00: *double return of security deposit*. As set out above, I find that the tenant has not established entitlement to the double return of her security deposit, and this aspect of the tenant's application is, therefore, hereby dismissed.

\$200.00: *discarded food*. While the landlords served the tenant with an order of possession which required her to vacate the unit on August 24, 2012, the landlords did not have a writ of possession and, in short, did not have authority to evict the tenant and change the locks to the unit on August 24, 2012. In the absence of any receipts or a detailed description of food allegedly lost, I find on a balance of probabilities that the tenant has established entitlement limited to **\$100.00**.

\$300.00: *costs associated with temporary living arrangement with family*. Similar to the findings set out immediately above, I find on a balance of probabilities that the tenant has established entitlement limited to **\$100.00**.

Sub-total entitlement: \$200.00*.

Offsetting the respective entitlement sub-totals, I find that the landlords have established a net entitlement of **\$425.50** (\$625.50 - \$200.00), and I hereby issue a **monetary order** under section 67 of the Act in favour of the landlords to that effect.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$425.50**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court 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: November 16, 2012.

Residential Tenancy Branch