



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF
 O MT CNR

Preliminary Issues

At the outset of the hearing the parties confirmed that the Tenant vacated the property on October 31, 2012 and the Landlord has regained possession. The Landlord has withdrawn their request for an Order of Possession and the Tenant withdrew her entire application for dispute resolution.

Introduction

This hearing dealt with the Application for Dispute Resolution filed by the Landlord for a Monetary Order for unpaid rent, to keep the security deposit and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord and gave affirmed testimony. The Tenant advised that she did not serve the Landlord with copies of her evidence.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?

Background and Evidence

The following facts are not in dispute:

- On August 7, 2012, the parties initially entered into a fixed term tenancy agreement for \$1,975.00 monthly rent; and
- On September 5, 2012 the parties entered into a new tenancy agreement for a month to month tenancy for the monthly rent of \$1,875.00; and
- The Tenant occupied the rental unit since August 28, 2012 and owes \$254.83 for August 2012 partial rent; and
- The Tenant paid a security deposit of \$980.00 in cash after the original deposit cheque was returned NSF; and
- The parties mutually agreed the Tenant would pay partial rent for September 2012 of \$950.00 and the Tenant would be responsible to hire a pest control company to deal with what she determined were pest issues and to arrange to clean the rental unit to her standards; and
- On September 30, 2012 the Tenant provided written notice that she would ending her tenancy effective October 31, 2012; and
- The Tenant did not pay rent for October 2012 and the parties mutually agreed that the security deposit of \$980.00 would be put towards the October 2012 rent; and
- The Tenant vacated the property October 31, 2012 and attended the move out inspection.

The Landlord is seeking recovery of \$925.00 for September rent because the Tenant did not provide him with receipts to prove she had the unit treated by a pest control company and professionally cleaned. He is also seeking the unpaid rent for August and October 2012 of \$2,129.83 (\$254.83 + \$1,875.00) because the Tenant occupied the unit for part of August and the entire month of October 2012, without paying rent.

The Landlord's Agent confirmed that she was the person who negotiated with the Tenant for the reduced rent for September and she did not inform the Tenant that receipts would be required.

The Tenant acknowledged responsibility to pay for August 2012 rent; however, she denies owing anything for October 2012. She stated that she was of the opinion that her security deposit of \$980.00 was enough to cover her rent for October considering she had to put up with a crying baby from next door, causing her to be sleep deprived, and an insect infested apartment which caused her to have to move out in such a short

period of time. The Tenant did not seek a remedy through dispute resolution prior to ending her tenancy and she confirmed that she occupied the rental unit until October 31, 2012.

Analysis

The Tenant confirmed that they did not provide the Landlord with copies of their evidence which is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision. I did however consider the Tenant's testimony and the Landlord's evidence and testimony.

When parties enter into a tenancy agreement the landlord has the obligation to provide a rental unit for the tenant to occupy and the tenant has the obligation to pay rent to occupy the unit, in accordance with the tenancy agreement.

In this case the Tenant occupied the rental unit from August 28, 2012 until October 31, 2012, and the only month she paid rent was September 2012. She acknowledges that she owes \$254.83 for August and that she occupied the unit for the entire month of October 2012.

Based on the foregoing I find the Landlord is entitled to a monetary claim for the unpaid rent for August and October 2012 of **\$2,129.83** (\$254.83 + \$1875.00), pursuant to section 26 of the Act that stipulates a tenant must pay rent in accordance with the tenancy agreement.

The parties had a mutual agreement which allowed the Tenant to short pay rent for September 2012 in exchange for her having a pest control company treat the rental unit. There was no requirement for the Tenant to produce receipts; therefore, I find there is insufficient evidence to support the claim for September rent. Accordingly, I dismiss the Landlord's claim for the balance of September 2012 rent.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

August Rent	\$ 254.83
October Rent	1,875.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,179.83
LESS: Security Deposit \$980.00 + Interest 0.00	<u>-980.00</u>
Offset amount due to the Landlord	<u>\$1,199.83</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,199.83**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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 26, 2012.

Residential Tenancy Branch