



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNSD, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

The Landlord and the Tenant agree that the rental unit was vacated on August 31, 2013. The Tenant stated that he has no intentions of returning to the rental unit. On this basis I find it unnecessary to consider the Landlord's application for an Order of Possession or the Tenant's application to set aside a Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided:

Is the Landlord entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on February 01, 2013; that the Tenant agreed to pay \$550.00 per month in rent; that the Tenant paid a security deposit of \$275.00; that the Tenant did not pay rent for August of 2013; and that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The male Landlord stated that the Notice was posted on August 05, 2013 and the Tenant stated that he located it on August 10, 2013.

The Tenant stated that the Landlord told him that he would not have to pay rent for August of 2013 if he temporarily vacated the rental unit to accommodate a site inspection by a by-law officer. He stated that he did move his property out of the unit on July 04, 2013 and moved it back into the unit on August 05, 2013. The Landlord denies this claim.

The Tenant submitted an undated letter from a friend who declared that the Tenant stayed with her for the month of August as he was having issues with an "illegal suite".

The Tenant submitted a letter from the City of Surrey, dated July 26, 2013, which informs the Landlord that he must remove the additional secondary suite and that the site will be inspected on September 04, 2013.

The Landlord has claimed compensation in the amount of \$1,100.00 but the Application for Dispute Resolution only indicates that the Landlord is claiming compensation for unpaid rent for August of 2013. At the hearing the male Landlord stated that he is also claiming compensation for rent for September.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$550.00, which was not paid for August of 2013. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$550.00 in outstanding rent to the Landlord.

I find that the Tenant submitted insufficient evidence to show that the Landlord advised him he did not have to pay rent for August of 2013. In reaching this conclusion I was influenced by the absence of a written agreement that refutes the male Landlord's testimony that he did not agree the Tenant did not have to pay rent for August.

In determining that the Tenant has not establish that he did not have to pay rent for August, I placed limited weight on the letter that was written by his friend, in part because it contradicts the Tenant's own testimony. In the letter the friend declares that the Tenant stayed with her for the month of August, however the Tenant testified that he moved his property back into the unit on August 05, 2013.

In determining that the Tenant has not established that he did not have to pay rent for August, I placed limited weight on the letter from the City of Surrey. Given that this letter declares the site will be inspected on September 04, 2013, it is illogical to me that the Tenant would move his property back into the unit on August 05, 2013. I find the Tenant's claim lacks credibility.

As the Tenant vacated the rental unit prior to September of 2013, I find that the Landlord is not entitled to compensation for rent for September. As the Landlord did not make a claim for lost revenue from September, I find that I cannot consider that application at these proceedings.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$600.00, which is comprised of \$550.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$275.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$325.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: September 20, 2013

Residential Tenancy Branch

