



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MNSD, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for unpaid rent and utilities, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on September 4, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by personal delivery on September 3, 2013, in accordance with section 89 of the Act.

The Landlords and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent and /or utilities and if so how much?
2. Is the Landlord entitled to compensation for unpaid rent and/or utilities and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on April 1, 2011 as a 5 month tenancy and then continued with another fixed term agreement with a month to month clause at the end of the fixed term. Rent was \$950.00 per month payable in advance of the 1st day of each month. The rent was shared between two rental units and the Tenant's share of the rent was \$580.00. The Tenant paid a security deposit of \$475.00 on March 20, 2011 and a pet deposit of \$475.00 in March 2011. The Property Manager said the pet deposit was returned to the Tenant in October, 2012 in the form of a rent payment. The Tenant said the tenancy ended on June 30, 2013 and he gave the Landlord's his forwarding address in writing on August 16, 2013.

The Landlord said they had to complete some renovations to the rental unit to comply with municipal bylaws so the Tenant moved out for October and November, 2012. The Landlord said if the renovations were completed in November the Tenant could move back in and no rent would be charged for November, 2012. The Landlord said the Tenant moved some of his things into the unit in November, 2012 and the Tenant moved back into the unit on December 1, 2012. The Landlord said the Tenant did not pay rent of \$580.00 for December, 2012 and he has unpaid utilities of \$211.00 for December as well. The Landlord continued to say he had a verbal agreement with the Tenant to pay the December, 2012 rent in January, 2013, but this did not happen. As a result the Landlords' are applying for unpaid rent of \$580.00 for December, 2012 and unpaid utilities of \$211.00.

The Tenant said he thought the Landlord and he had a verbal agreement that he would receive one month free rent as compensation for moving out for the renovation. The Tenant said that is why he did not pay the December, 2012 rent or utilities. As well the Tenant said he was told when he made his application that he could apply for double the security deposit and that is what he did. The Tenant has applied for double the security deposit of \$475.00 in the amount of \$950.

The Landlord said he had an agreement with the Tenant to pay the December rent in January and that proves the Tenant had agreed to pay the December, 2012 rent. The Tenant said he did agree to pay the December, 2012 rent in January, 2013 because the Landlord changed the verbal agreement after the fact, but he did not pay the December, 2012 rent or utilities.

The Landlords said in closing this was a good tenancy and all they are looking for is the unpaid rent and utilities that the Tenant owes them.

The Tenant said in closing that he was inconvenienced by the renovations because he had to move out of the unit or 2 months while the renovations were done.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the Landlord's testimony that the Tenant agreed to pay the December, 2012 rent and utilities, as it is supported by the Tenant saying that he did agree to pay the December, 2012 rent in January, 2013 even though it was a change from the agreement that he thought he had with the Landlord.

The Tenant does not have the right under the Act to withhold part or all of the rent or utilities; therefore I find the Tenant is responsible for the rent of \$580.00 for December, 2012. Unpaid utilities are treated as unpaid rent if the Landlord gives the Tenant a formal demand to pay the utility bill. I find the Landlord has given the Tenant that demand in the application and therefore I award the Landlord \$211.00 of unpaid utilities.

With respect to the Tenant's application for double his security deposit in the amount of \$950.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the Landlord did make an application on August 30, 2013 which is 14 days after receiving the Tenant's forwarding address in writing, therefore the Tenant's claim for double the deposit does not stand. I dismiss the Tenant's claim for the return of double the security deposit in the amount of \$950.00.

As the Tenant has been unsuccessful in this matter I order the Tenant to bear the cost of the application of \$50.00 that he has already paid.

As the Landlords have been successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent and utility arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 580.00	
	Unpaid utilities	\$ 211.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$ 841.00
Less:	Security Deposit	\$ 475.00	
	Subtotal:		\$ 475.00
	Balance Owing		\$ 366.00

Conclusion

A Monetary Order in the amount of \$366.00 has been issued to the Landlords. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) 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: December 11, 2013

Residential Tenancy Branch

