



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on March 12, 2014 two copies of the Application for Dispute Resolution hearing packages were sent to the male tenant, under both variations of the tenant's first name indicated on the tenancy agreement. The landlord used the forwarding address given at the end of the tenancy. Canada Post tracking numbers and receipts was provided as evidence of service to the male tenant.

On March 20, 2014 the female tenant was served a copy of the Application for Dispute Resolution hearing package, sent to the forwarding address given, via registered mail. A Canada Post tracking number and receipt was provided as evidence of service.

Section 90 of the Act determines that service is deemed completed on the 5th day after mailing.

These documents are deemed to have been served in accordance with section 89 of the Act; however neither tenant appeared at the hearing.

Preliminary Matters

The details of the dispute section of the application set out a claim for damage or loss under the Act.

A copy of the evidence was sent to each tenant, to the forwarding address, on March 31, 2014. The evidence included copies of all utility bills.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$228.30 for unpaid hydro and gas utility costs?

May the landlord retain the sum owed from the security deposit?

Background and Evidence

The tenancy commenced on September 15, 2013; rent was \$800.00 per month, due on the 1st day of each month. A security deposit in the sum of \$400.00 was paid.

A copy of the tenancy agreement was submitted as evidence; the 2 page addendum was not submitted. The agreement indicated that only the water utility was included with the rent. The sections notating electricity and heat were initially checked and then deleted, with one of the tenants and the landlord initialing the boxes. The landlord stated that tenants had agreed to pay 1/3 of the utility costs.

The tenancy ended on March 1, 2014. A copy of the move-in and move-out condition inspection report was supplied as evidence. The tenant signed the report and provided a forwarding address. Within 6 days the landlord applied claiming against the deposit.

The landlord provided copies of 3 Fortis gas bills issued for the property between December 27, 2013 and February 26, 2014. A copy of a hydro bill for January 29 to February 19, 2014 was supplied as evidence.

A monetary worksheet submitted as evidence and a utilities breakdown of cost was supplied as evidence. The tenants did make one \$50.00 payment, reducing the sum claimed.

The landlord claimed:

- \$68.02 December 2013 gas;
- \$55.51 January 2014 gas;
- \$70.20 February 2014 gas; and
- \$84.57 January to March 2014 hydro; less the \$50.00 payment made.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of evidence to the contrary, I find that the tenants received the utility bills and failed to pay the 1/3 cost assigned to them. Therefore, I find that the landlord is entitled to compensation for the utility costs and that he is entitled to retain \$228.30 from the security deposit.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Residential Tenancy Branch policy suggests when a landlord claims against a deposit, any balance that may remain should be ordered returned to the tenant. I find this is a reasonable stance.

Based on these determinations I grant the tenants a monetary Order for the balance of the security deposit in the sum of \$121.70. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to retain the cost of utilities from the security deposit.

The landlord is entitled to the \$50.00 filing fee which may be deducted from the security deposit.

The tenants are entitled to a monetary Order for the balance of the security deposit.

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: June 24, 2014

Residential Tenancy Branch

