



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

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

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The tenant confirmed receipt of the landlord's written submissions; the tenant did not make a written submission.

Issue(s) to be Decided

May the landlord retain the \$600.00 security deposit paid as compensation for loss of one-half July 2013 rent revenue?

Background and Evidence

There was no dispute that the tenant paid the landlord \$600.00 on June 17, 2013, as a security deposit for a tenancy that was to commence on July 1, 2013. The security deposit is one-half of the rent that would be due.

When the tenant met with the landlord to complete the move-in inspection he and his wife determined that the unit was not to the standard they desired and they told the landlord they would not take possession.

The landlord told the tenant he would return the deposit.

On June 17, 2014 the tenant sent the landlord a letter, requesting return of the deposit. The landlord confirmed receipt of that letter on June 20, 2014. The letter included a forwarding address for the tenant.

On July 7, 2014 the landlord applied to retain the deposit as he could not rent the unit effective July 1, 2013. The landlord located a new occupant effective July 15, 2013.

The tenant said that the unit was not up to standard and that once they saw the unit when it was empty, he determined he could not move in.

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.

Section 16 of the Act provides:

Start of rights and obligations under tenancy agreement

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

Section 17 of the Act provides that a security deposit payment can be made as a condition of entering into a tenancy agreement.

I find, on the balance of probabilities that when the tenant paid the security deposit on June 17, 2013 it was for the sole purpose of entering into a tenancy agreement that was to commence on July 1, 2013. When the tenant decided on July 2, 2013 that he would not take possession of the unit he then breached the Act. For example; if the tenancy had been a month-to-month term the tenant could have provided written notice, ending the tenancy effective August 31, 2013.

Therefore, I find that the tenancy commenced on July 1, 2013 and, pursuant to section 44(f) of the Act; that it ended the next day when the tenant decided not to take possession.

The landlord had expected the tenant to take possession and pay rent for the unit. I find that the landlord mitigated his loss, as required by section 7 of the Act, by locating a new occupant for the unit effective July 15, 2013. Therefore, I find that the landlord is entitled to retain the \$600.00 security deposit in satisfaction of the claim for loss of July 2013 rent revenue.

As the landlord applied claiming against the deposit on July 7, 2014 I find that he made the application within fifteen days of June 20, 2014. The fifteenth day was July 5, 2014; but the RTB office was closed. The next earliest day to submit the application was July 7, 2014. Therefore, in accordance with the Rules of Procedures definition of days, I find that the landlord applied claiming against the security deposit within the required time-frame.

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

Based on these determinations I grant the landlord a monetary Order in the sum of \$50.00. 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.

Conclusion

The landlord may retain the security deposit as compensation for loss of July 2013 rent revenue.

The landlord is entitled to recover the filing fee cost.

This decision is final and binding and 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 24, 2014

Residential Tenancy Branch

