



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of November 2014 rent paid and to recover the filing fee from the landlord 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. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to return of rent paid in the sum of \$1,475.00 for the month of November 2014?

Background and Evidence

There was no dispute that the tenancy was a one year fixed term agreement that commenced February 1, 2014. The tenant paid rent in the sum of \$1,475.00, due on the first day of each month.

The parties agreed that the tenant vacated the rental unit at the end of October, 2014.

There was no dispute that the landlord cashed the tenant's November 2014 rent cheque in the sum of \$1,475.00. There was also no dispute that the landlord was able to mitigate the loss of rent revenue and placed new tenants into the unit for November 2014. The new tenants also paid November 2014 rent.

The landlord believed that since they had agreed to allow the tenant to vacate at the end of November 2014 he was obliged to pay November 2014 rent. The landlord relied on agreed upon terms and believed the sum was owed by the tenant.

The tenant has requested return of the rent as the landlord did not suffer a loss of rent revenue.

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.

Pursuant to section 44(d) of the Act I find that the tenancy ended effective October 31, 2014. Once the tenancy ended the landlord was no longer entitled to rent payments by the tenant.

The landlord has retained a rent payment for a month beyond the end of the tenancy. Even though the tenancy may not have ended in accordance with the legislation, it had ended. Therefore, I find pursuant to section 62(3) and 65(c) of the Act, that the sum of \$1,475.00 must be returned to the tenant. This payment was made to the landlord based on the tenancy agreement signed by the parties. When the tenancy ended the landlord was no longer entitled to cash the post-dated rent cheques. If the tenant had breached the Act, the landlord was required to bring forward a claim for compensation and, if successful, would have been issued a monetary Order.

The landlord confirmed during the hearing that they may have misunderstood their right to retain the payment for November 2014 rent and did not dispute that they had mitigated and located new tenants who paid November, 2014 rent.

As the tenant's application has merit I find that the tenant is entitled to recover the \$50.00 filing fee.

Based on these determinations I grant the tenant a monetary Order for the balance of \$1,525.00. 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 tenant is entitled to compensation as claimed.

The tenant is entitled to filing fee costs.

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: June 04, 2015

Residential Tenancy Branch