



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on December 02, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Agent for the Tenant acknowledged receipt of these documents.

On March 01, 2016 the Landlord submitted five pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on March 15, 2016. The Agent for the Tenant acknowledged receiving this evidence on March 17, 2016 and it was accepted as evidence for these proceedings.

On March 17, 2016 the Tenant submitted eight pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was posted on the Landlord's door; although she cannot recall the date it was posted. The Landlord acknowledged receiving this evidence on, or about, March 17, 2016 and it was accepted as evidence for these proceedings.

Both parties indicated they were prepared to proceed with the hearing and that they did not require additional time to consider the evidence served to them.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Agent for the Tenant agree that:

- the Tenant moved into the rental unit on, or about March 01, 2012;
- when the tenancy began the Tenant agreed to pay rent of \$900.00 per month by the first day of each month;
- the Tenant paid a security deposit of \$900.00;
- at a previous dispute resolution proceeding the Landlord was ordered to refund \$450.00 of the original security deposit to the Tenant;
- the Tenant has recovered \$450.00 of the original security deposit; and
- the tenancy ended on August 31, 2015.

The Landlord and the Agent for the Tenant agree that at previous dispute resolution proceedings the Tenant was given authority to reduce the rent from \$900.00 to \$850.00, effective April 01, 2015. The Agent for the Tenant contends that the rent reduction was permanent and the Landlord contends the rent reduction was in place until he completed repairs to the rental unit.

Both parties agreed that I should refer to the previous dispute resolution decisions prior to rendering a decision in this matter. I have referred to those decisions, the file numbers for which appear on the first page of this decision.

The Landlord is seeking compensation for unpaid rent, in the amount of \$1,200.00, for the period between October 01, 2013 and March 31, 2014 and unpaid rent, in the amount of \$1,200.00, for the period between October 01, 2014 and March 31, 2015.

The Landlord and the Agent for the Tenant agree that the Tenant only paid monthly rent of \$700.00 for the period between October 01, 2013 and March 31, 2014 and the period between October 01, 2014 and March 31, 2015.

The Landlord stated that he authorized the Tenant to reduce his rent from \$900.00 to \$700.00 for six months, beginning September 01, 2012, after the Tenant told him he was considering moving. The Landlord stated that he agreed to this rent reduction for this six month period only.

The Agent for the Tenant stated that the Tenant interpreted the agreement to reduce the rent from \$900.00 to \$700.00 was a seasonal rent adjustment that would occur every year for the months of October, November, December, January, February, and March.

Both parties submitted a series of emails exchanged between the parties in 2012. In an email dated September 07, 2012 the Landlord wrote, in part, that he is "willing to drop the rent for (6) six months to \$700.00 per month if you are in agreement starting in sept". In an email dated October 28, 2012 the Tenant wrote, in part, "after six months is

the house still available to rent at the full \$900.00 or is it not available to rent after march?”. In an email dated December 21, 2012 the Landlord wrote, in part, that he “only wanted to commit to six months at that \$700 per month rate”.

Both parties submitted an email, dated August 08, 2013, in which the Tenant asked if the rent would be reduced to \$700.00 in September in accordance with the “deal” from the previous year. Neither party submitted a respond to this email.

The Tenant submitted an email, dated February 28, 2015, in which the Landlord forwarded the email from October 28, 2012 and in which he asserted that the original rent reduction was for six months only.

The Landlord stated that he works out of town and he was not aware that the Tenant had been paying reduced rent for the periods between October 01, 2013 and March 31, 2014 and October 01, 2014 and March 31, 2015 until his bookkeeper brought it to his attention in the early part of 2015. He stated he discussed the reduced rent payments with the Agent for the Tenant on April 16, 2015 and that he subsequently sent the Tenant a letter about the missed payment on, or about, July 01, 2015.

The Tenant submitted an email, dated February 28, 2015, in which the Landlord reminds the Tenant that the Landlord agreed to reduce the rent for “six months only”.

The Agent for the Tenant stated that the Landlord did not raise the issue of the reduced rent payments until just before the Tenant received the letter that was sent on, or about, July 01, 2015. She stated that it is worth noting that the Landlord did not raise the issue of the reduced rent payments until the two previous dispute resolution proceedings were commenced.

At the conclusion of the hearing both parties were given the opportunity to raise issues that had not been discussed up to that point in the hearing. I note that neither party testified about when the Tenant’s forwarding address was received by the Landlord, although there is a letter on file, dated November 09, 2015, in which the Tenant provides a forwarding address. The parties did not explain how/when this letter was served to the Landlord.

Analysis

On the basis of the undisputed evidence, I find that when this tenancy began the Tenant agreed to pay \$900.00 in rent by the first day of each month. On the basis of this agreement the Tenant is obligated to pay this amount of rent unless the rent is increased or decreased in accordance with the *Act*.

On the basis of the decision from the previous dispute resolution proceeding of June 01, 2015 I find that the rent was reduced to \$850.00 by a Residential Tenancy Branch Arbitrator, effective April 01, 2015. As the Arbitrator concluded that the rent would remain at \$850.00 until it was “either changed in accordance the *Act*, or by written

agreement of the tenant", I find that this rent reduction remained in place until the rent was increased in accordance with the Act and that the reduction was not dependant on repairs.

On the basis of the undisputed evidence I find that the Landlord offered to reduce the rent for a six month period, effective September 01, 2012. As the Landlord agreed to reduce the rent to \$700.00 for six months in 2012, I find that the Tenant was entitled to reduce the rent for six months in 2012.

I find that the Tenant did not have the right to reduce his rent to \$700.00 for any month in 2013, 2014, or 2015. In reaching this conclusion I was influenced by the email, dated September 07, 2012, in which he wrote that he was "willing to drop the rent for (6) six months to \$700.00 per month if you are in agreement starting in sept". I find that this email corroborates the Landlord's testimony that he did not tell the Tenant the rent reduction would be "seasonal" and the email does not support the Tenant's interpretation that the rent reduction was "seasonal".

In determining that the Tenant did not have the right to reduce his rent to \$700.00 for any month in 2013, 2014, or 2015, I was influenced by the email, dated October 28, 2012, in which the Tenant asked whether the rental unit was "still available to rent at the full \$900.00" after six months. I find that this email does not support the Tenant's interpretation that the rent reduction was "seasonal".

In determining that the Tenant did not have the right to reduce his rent to \$700.00 for any month in 2013, 2014, or 2015, I was influenced by the email, dated December 21, 2012, in which the Landlord declared that he "only wanted to commit to six months at that \$700 per month rate". I find that this email does not support the Tenant's interpretation that the rent reduction was "seasonal".

In determining that the Tenant did not have the right to reduce his rent to \$700.00 for any month in 2013, 2014, or 2015, I considered the email, dated August 08, 2013, in which the Tenant asked if the rent would be reduced to \$700.00 in September in accordance with the "deal" from the previous year. In the absence of a written response to this query, I find that the Tenant did not have reasonable grounds to conclude that he had authority to reduce his rent to \$700.00 in 2013, 2014, or 2015.

As there is insufficient evidence to conclude that the Tenant had authority to reduce his rent to \$700.00 in 2013, 2014, or 2015, I find that he remains obligated to pay \$900.00 in rent for the periods between October 01, 2013 and March 31, 2014 and October 01, 2014 and March 31, 2015, which is a total of \$10,800.00. As the Tenant has only paid a total of \$8,400.00 for these months, I find that he still owes \$2,400.00 in rent for those months.

On the basis of the Landlord's testimony and in the absence of evidence to the contrary, I accept the Landlord's explanation that he was not aware of the reduced rent payments between October 01, 2013 and March 31, 2014 and October 01, 2014 and March 31,

2015 until it was brought to his attention in the early part of 2015. While this may be indicative of a poor business practice it does not, in my view, establish that full rent was not due for those periods.

On the basis of the email submitted in evidence by the Tenant, dated February 28, 2015, I find that the Landlord raised a concern about the reduced rent payment on February 28, 2015. I find this email corroborates the Landlord's testimony that the matter was raised in the early part of 2015 and refutes the Agent for the Tenant's testimony that it was not raised until shortly before July 01, 2015.

Residential Tenancy Branch records show that the previous two dispute resolution proceedings were filed in April of 2015. As these proceedings were filed well after February 28, 2015, I cannot conclude that the Landlord's communication about the reduced rent payments was influenced by the dispute resolution proceedings that were filed in April of 2015.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,450.00, which is comprised of \$2,400.00 in unpaid rent and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I grant the Landlord authority to retain the security deposit of \$450.00 he is holding, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,000.00. In the event that the Tenant does not voluntarily 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: March 31, 2016

Residential Tenancy Branch

