



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This was a cross-application hearing.

On October 9, 2015 the landlord applied requesting compensation for unpaid utilities, loss of rent revenue, to retain the security deposit and to recover the filing fee costs from the tenant.

On November 10, 2015 the tenant applied requesting return of the security deposit and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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 relevant evidence and testimony provided.

Preliminary Matters

The parties confirmed receipt of each other's applications within the required time limit.

The landlord confirmed receipt of the tenant's evidence, served with the application.

The tenant received the landlords' 21 page evidence submission. That evidence was not before me and there was no record indicating the evidence had been filed with the Residential Tenancy Branch (RTB).

The landlord's evidence included a monetary worksheet setting out a monetary claim totaling \$1,391.45; versus the \$650.00 claim on the application. The tenant said she understood the landlord intended to claim the cost of gas, hydro, internet and loss of rent and was prepared to respond to that claim. Therefore, the landlord's application was amended to reflect the sums claimed on the monetary worksheet that was before the landlord and tenant.

The tenant made a one page evidence submission on March 22, 2016; that evidence was not given to the landlord and was set aside. The tenant was at liberty to make oral submissions.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$19.29 for gas; \$41.16 for hydro; \$31.50 for internet?

Is the landlord entitled to compensation in the sum of \$1,300.00 for the loss of October 2015 rent revenue?

Is the landlord entitled to retain the security deposit or must the deposit be ordered returned to the tenant?

Background and Evidence

This month-to-month tenancy commenced on July 21, 2015. Rent was \$1,300.00 due on the first day of each month. The signed tenancy agreement submitted as evidence included a term requiring the tenant to pay 50% of utility costs. A security deposit in the sum of \$650.00 was paid. A move-in condition inspection report was completed.

There was no dispute that on September 7, 2015 the tenant gave written notice to vacate on September 30, 2015. A copy of the notice was supplied as evidence.

The tenant said that she gave the landlord two requests for completion of a move-out inspection. The first written request was delivered by placing the note in the landlord's door jamb on September 28, 2015. The note asked if they could meet on October 1, 2015 at 12:30. The tenant did not hear from the landlord. A copy of this note was not supplied by the tenant.

On September 29, 2015 the tenant issued a second written request to the landlord. The copy of the note indicated that service of the notice occurred by placing in the mail slot. The tenant asked if they could meet at 2:00 p.m. on Wednesday (September 30, 2015) for the final walk-through.

The tenant said the landlord did not confirm for either date and the inspection did not take place.

There was no dispute that the landlord received the tenants' written forwarding address on September 26, 2015.

The landlord said that she and the tenant spoke on September 30, 2015 and agreed to meet to complete the inspection the next day. The tenant wrote her cell phone number on the note that had been given to the landlord. The landlord went to the rental unit on October 1, 2015, at the agreed time. The landlord said she was being held up in traffic

so called her son, asking him to wait for the tenant until she arrived, but the tenant did not attend.

The tenant said that she did not dispute that the landlord was entitled to compensation for utility costs but she had never been given copies of the bills. She had told the landlord to give her bills and she would pay.

The tenant agreed that the landlord is entitled to the sum of \$55.03 for hydro costs to the end of the tenancy. The claim was pro-rated to the end of the tenancy.

The tenant confirmed she owed one half of the \$63.00 monthly internet bill. The tenant owed \$31.50 for September, 2015.

The tenant had a gas utility bill to October 9, 2015 indicating that her share would be \$38.58. The tenant had previously paid a gas bill, but now disagreed as she did not have gas appliances and the landlord did. The landlord explained that the tenant had a gas hot water tank and was made aware of that fact at the start of the tenancy.

The landlord has claimed the loss of October 2015 rent revenue as the tenant did not give proper notice to end the tenancy. The landlord said that she did not take any steps to locate new tenants until after the tenant vacated.

The tenant said she had been trying to find a new rental and once she did she gave notice ending the tenancy and realizes that notice as late.

Analysis

Based on the terms of the tenancy agreement and the tenants' agreement during the hearing, I find that the landlord is entitled to compensation for hydro and internet costs; as claimed in the sums of \$55.03 and \$31.50, respectively.

The tenant did not believe she should pay gas utilities when the landlord had gas appliances and she did not. From the evidence before me I find that the tenant did sign the tenancy agreement, agreeing to pay one-half of the utility costs, to cover the cost of a gas hot water tank. As the tenant had already paid one bill I find that agreement was also supported by the tenants' actions. Therefore, I find that the landlord is entitled to compensation in the sum of \$19.29 for gas utility costs; the sum established at the start of the hearing as that claimed.

I find, pursuant to section 44(1)(f) that the tenancy ended on September 30, 2015; the date the tenant vacated.

Section 45 of the Act requires a tenant to give at least one months' written notice the day before the day in the month rent is due. The written notice given on September 7, 2015 would have been effective October 31, 2015. Therefore, I find that the tenant

breached section 45 of the Act when notice was given and the tenancy ended on September 30, 2015.

In relation to the landlord's claim for the loss of rent revenue, I have considered section 7 of the Act, which provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

A breach of the Act by the tenant does not confer an automatic right to compensation by the landlord. The landlord must provide evidence that steps were taken commencing September 7, 2015 to locate new tenants. The landlord confirmed that no steps were taken to seek out new tenants for October 1, 2015. The landlord waited until the tenant had vacated and did not make any effort to re-rent the unit until after that time. I find that the failure to immediately commence advertising the unit once the tenants' notice was received forms a breach of section 7 of the Act. There was no evidence before me that would support the landlord's failure to properly mitigate the loss claimed for rent revenue. Therefore, I find that the claim for loss of October 2015 rent revenue is dismissed.

In relation to the security deposit, as the landlord had a claim against the deposit for unpaid utilities the issues regarding the condition inspection reports are not relevant.

Therefore, I find that the landlord is entitled to deduct total compensation in the sum of \$105.82 from the security deposit, in satisfaction of the claim.

The tenant is entitled to return of the balance of the security deposit in the sum of \$544.18.

As each application has some merit I find that the filing fee costs are set off against the other.

Based on these determinations I grant the tenant a monetary Order in the sum of \$544.18. 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 compensation for gas, hydro and internet costs.

The landlord's claim for loss of rent revenue is dismissed.

The landlord may retain the sum owed from the security deposit.

The tenant is entitled to return of the balance of the security deposit.

Filing fee costs are set off against the other.

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: April 27, 2016

Residential Tenancy Branch