



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord confirmed receipt of the tenant's notice of hearing package and the submitted documentary evidence. I note that no documentary evidence was on file from the tenant. The tenant confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. I note that as there is no record of the tenant's documentary evidence and that the landlord has confirmed receipt of it that there were no issues regarding the tenant's documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

At the outset both parties confirmed that possession of the rental unit is no longer in question as the tenant has vacated the rental unit on November 30, 2016. The tenant's application is cancelled and requires no further action.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on November 1, 2012 on a fixed term tenancy until October 31, 2013 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. Both parties agreed that the monthly rent was \$950.00 payable on the last day of each month and that a security deposit of \$475.00 was paid on October 31, 2012.

The landlord seeks a monetary claim of \$2,203.69 which consists of:

\$475.00	Unpaid Rent (August 2016)
\$133.69	Unpaid Utilities (July, August and September)
\$1,595.00	Vancouver Eviction Services Fee

The landlord states that the issues arise out the tenant allowing "roommates" into the rental unit who would eventually become tenants if allowed by the landlord. The landlord stated that a dispute occurred between the tenant and her "roommates" which caused the tenant to vacate the rental unit for a period of 1 week during August 2016. The tenant disputes this stating that it was the landlord who authorized "roommates", as she had wanted to vacate the rental unit. The tenant confirmed the remaining events.

The landlord claims that the tenant failed to pay all of the rent of \$950.00 for August 2016. The tenant confirmed that she only paid \$475.00 to the landlord, but that her "roommates/new tenants" were responsible for paying the remaining rent to the landlord. The landlord disputes this stating that he has no relationship with these "roommates" other than the tenant requested that these "roommates" if they were

acceptable to the landlord, to end her tenancy so that she could leave and have the “roommates” start a tenancy with the landlord. The tenant disputes this stating that the landlord gave keys to the rental unit to the “roommates” which shows that the landlord had made an agreement with them. The landlord disputes this stating that he was requested by the tenant to give keys to the “roommates” to the rental unit.

The landlord seeks recovery of unpaid utilities totalling \$133.69 which consists of gas and electricity bills. Both parties agreed that utilities were not included as part of the tenancy. The tenant disputes the landlords’ claims stating that utilities are all paid in full to the landlord. The tenant stated that the utilities were paid in cash to the landlord for which the landlord has repeatedly failed to issue receipts. The tenant stated that she has no proof of payment for the utilities.

The landlord seeks recovery of \$1,595.00 for services to assist the landlord in evicting the “roommates” from the rental unit. The landlord claims that since the tenant brought in the “roommates” and then could not get them to vacate the rental unit, the tenant should be responsible for this cost. The tenant disputes this stating that it was the landlord who authorized the “roommates” to move in without her consent. Both parties referred to a letter dated November 16, 2016 issued by the police. It states in part,

*...On August 16, 2016 the police were dispatched to..., in the City of Port Coquitlam for a call of **assisting general public to remove two [02] tenants** from the basement suite.*

Upon attendance, police spoke to several persons including tenants, a bailiff and the Landlord, ...produced all legal documents and rental agreements to indicate the situation not a Landlord/Tenant dispute but an illegal dwelling of the residence.

***After discussion, the two [02] person found to be illegally in the basement suite** decided to cooperate with the bailiff and agreed to move out the next day- file concluded, not a police matter.*

The tenant argues that this letter shows that the police regarded the “roommates” as tenants. The landlord disputes this stating that further into the report it states that “After discussion, the two [02] person found to be illegally in the basement suite” shows that the police had made a determination that the “roommates” were not tenants. The landlord further states that he only has one tenancy agreement and that it is with the named tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, both parties have agreed that the tenant did not pay all of the \$950.00 August rent. The tenant claims that the “roommates” were responsible in directly dealing with the landlord. The landlord has disputed this stating that no relationship was created. The tenant has provided direct testimony as well as referring to a letter from her workplace which mentions that the tenant confirming that a relationship was created by the landlord with these “roommates”. The landlord has disputed this stating that he only has one signed tenancy agreement with the tenant and that no agreements were reached with the “roommates”.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the tenant has claimed that a relationship as a tenant was created between her landlord and the “roommates”. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant has failed to provide sufficient evidence to satisfy me that a relationship was created between the landlord and the “roommates”. The only definitive relationship established is that of the landlord and the tenant, which is shown in the signed tenancy agreement. As such, I find that the tenant was the legal occupant of the tenancy. Both parties confirmed that only \$475.00 of the \$950.00 August rent was paid. The landlord has established that all of the August rent was not paid.

On the second issue of unpaid utilities, both parties have confirmed that utilities were not part of the tenancy and that the tenant was responsible for the utilities. The tenant has disputed that all utilities were paid in full to the landlord in cash. The tenant cites that the landlord has never issued receipts for any cash payments. In any event the tenant is unable to provide any supporting evidence that utility payments were made. As such, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant in this case. The landlord is entitled to recovery of the \$133.69 for utilities.

On the landlord's third monetary claim of \$1,595.00, I prefer the evidence of the landlord over that of the tenant and find that as no relationship was created between the landlord and the "roommates" the tenant is ultimately responsible for this cost incurred by the landlord to remove the "roommates". The landlord has submitted a copy of the invoice for the cost incurred. The tenant did not dispute the actual amount of the invoice. The landlord is entitled to recovery of the \$1,595.00.

The landlord has established a total monetary claim of \$2,203.69.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$2,303.69,

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: December 08, 2016

Residential Tenancy Branch