



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, 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 or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on August 31, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the hearing proceeded in his absence.

Issue(s) to be Decided

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

Background and Evidence

The Landlord stated that:

- this tenancy began in early 2013;
- the Tenant agreed to pay monthly rent of \$495.00 by the first day of each month;
- the Tenant paid a security deposit of \$247.50;
- the tenancy ended on September 30, 2014;
- when the tenancy ended the Tenant verbally agreed that the Landlord could retain the security deposit for outstanding rent for September of 2014;
- when the tenancy ended the Tenant owed \$1,639.37 in rent for various periods prior to September 01, 2014;
- after the tenancy ended the Tenant paid \$439.37 towards the overdue rent;
- the Tenant still owes \$1,200.00 in rent; and
- the Tenant did not provide him with a forwarding address, in writing, until he sent it by text message sometime in June of 2016.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$495.00 and that the Tenant still owes \$1,200.00 in rent that accrued prior to September 01, 2014. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,200.00 in outstanding rent to the Landlord.

As the Landlord has not applied for compensation for unpaid rent for any portion of September of 2014, I have not considered whether he is entitled to compensation for that month.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. As the Tenant did not agree, in writing, that the Landlord could apply his security deposit towards unpaid rent from September, I cannot conclude that the Landlord had the right to retain the security deposit for that reason.

Section 39(a) of the *Act* stipulates that despite any other provision of this *Act*, a landlord may keep a security deposit if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy. As the evidence shows that the tenancy ended in September of 2014 and the forwarding address was not received, in writing, until June of 2016, I find that the Landlord did not need to apply to retain the security deposit and that he is entitled to retain the security deposit, pursuant to section 39 of the *Act*.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,300.00, which includes \$1,200.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$1,300.00. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 28, 2017

Residential Tenancy Branch