



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The female Landlord stated that on January 17, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were personally served to the male Tenant. The Tenant acknowledged receipt of these documents, which he stated were shown to the female Tenant. As the male Tenant acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

On January 24, 2017 the Landlords submitted 2 pages of evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was personally delivered to the forwarding address provided by the Tenant, which is the male Tenant's place of employment. The male Tenant stated that he did not receive this evidence from his employer.

One of the documents submitted to the Residential Tenancy Branch on January 24, 2017 was a hydro bill in the amount of \$574.12. The male Tenant stated that he has this bill in his possession and he was able to view it at the time of the hearing. As the Tenant is in possession of the bill, it was accepted as evidence for these proceedings

The second document submitted to the Residential Tenancy Branch on January 24, 2017 was a Proof of Service of the Notice of Dispute Resolution Hearing. As the Tenant does not acknowledge receipt of this evidence and there is no evidence to establish that it was forwarded to him by his employer, I cannot conclude that this

document was served to him in accordance with section 88 of the *Residential Tenancy Act* (Act). This document was, therefore, not accepted as evidence for these proceedings.

The female Landlord acknowledged that the Proof of Service of the Notice of Dispute Resolution Hearing is not particularly relevant to these proceedings, given that the Tenants do not dispute service of the Application for Dispute Resolution. She therefore declined the opportunity to adjourn the hearing for the purposes of re-serving this document.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, to recover all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure allow a tenant to file an Application for Dispute Resolution to counter a claim being made by a landlord, providing the issues identified in the cross-application are related to the issues identified in the application being countered or responded to.

The male Tenant stated that the Tenants' claim for compensation relates, in large part, to a Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenants to end a previous tenancy.

The parties agree that they had a previous tenancy, which ended on August 31, 2015. This tenancy was for a separate rental unit on the same residential property.

Given that the Tenants' Application for Dispute Resolution and the Landlords' Application for Dispute Resolution do not relate to the same rental unit, I find that the applications should not be heard at the same time.

I therefore considered the Landlords' Application for Dispute Resolution and I will schedule a new date to consider the Tenants' Application for Dispute Resolution. An interim decision will be issued that provides details of the new hearing.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 01, 2015;
- the Tenant agreed to pay monthly rent of \$1000.00 by the first day of each month;
- prior to entering into a tenancy agreement for this rental unit the Tenants were renting a different rental unit from the Landlords;
- the Tenants paid a security deposit of \$625.00 and a pet damage deposit of \$300.00 for the previous tenancy;
- the pet damage deposit and security deposit that was paid for the previous tenancy was applied to this tenancy;
- a condition inspection report of this rental unit was completed at the beginning of the tenancy, on September 12, 2015;
- on July 01, 2016 the Landlords served the Tenants with a Two Month Notice to End Tenancy, which had an effective date of September 30, 2016;
- at a previous dispute resolution proceeding the parties reached a settlement agreement, in which they mutually agreed to end this tenancy on December 31, 2016;
- a condition inspection report was completed at the end of the tenancy, on December 31, 2016; and
- the Tenants forwarding address was written on the condition inspection report on December 31, 2016.

The Landlords are seeking compensation, in the amount of \$1,000.00, in rent. The parties agree that the Tenants did not pay any rent for September or December of 2016.

The Landlords submit that since the Tenants did not pay rent for September of 2016 they have been properly compensated for being served with the Two Month Notice to End Tenancy in July of 2016. The Landlords argue that since the Tenants have been properly compensated for being served with the Two Month Notice to End Tenancy, they were obligated to pay rent for the last month of this tenancy, which was December of 2016.

The Tenant stated that they withheld the rent for September of 2016 as compensation for being served with a Two Month Notice to End Tenancy, which ended a previous tenancy. He stated that they withheld the rent for December of 2016 as compensation for being served with a Two Month Notice to End Tenancy in July of 2016, which ended this tenancy.

The Landlords are seeking compensation, in the amount of \$235.39, in unpaid utilities. The male Tenant agrees they owe utilities in this amount.

Analysis

On the basis of the undisputed evidence I find that the parties entered into a tenancy agreement that began on September 01, 2015 and ended on December 30, 2016, for which the Tenants agreed to pay monthly rent of \$1,000.00.

On the basis of the undisputed evidence I find that on July 01, 2016 the Tenants were served with a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. I find that the Tenants received the equivalent of one month's rent payable under the tenancy agreement when they withheld rent for September of 2016 and I therefore find that they have been fully compensated for being served with the Two Month Notice to End Tenancy in July of 2016.

As the Tenants have been fully compensated for being served with the Two Month Notice to End Tenancy in July of 2016, they remained obligated to pay the rent that was due in December of 2016. As they have not paid that rent, I find that they owe the Landlords \$1,000.00 in rent.

In adjudicating this matter I have placed no weight on the Tenants' submission that they withheld the rent for September of 2016 as compensation for being served with a Two Month Notice to End Tenancy that ended a previous tenancy. There is nothing in the *Act* that authorizes a tenant to withhold rent from a current tenancy on the basis of something that occurred during a previous tenancy, even if the landlord is the same party for both tenancies. The Tenants retain the right to pursue compensation for any money that may be due from the previous tenancy.

As the Tenants agree that owe \$235.39 in unpaid utilities, I grant the Landlords' claim for this amount.

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.

I am unable to award compensation for a filing fee paid for a previous Application for Dispute Resolution. That claim should have been considered at the previous hearing.

Conclusion

The Landlords have established a monetary claim, in the amount of \$1,335.39, which includes \$1,235.39 in rent and utilities and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenants' security/pet damage deposit of \$925.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance \$410.39. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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: July 07, 2017

Residential Tenancy Branch