



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Procedural matter

The tenant filed for return of double their security deposit, which was scheduled to be heard on September 13, 2018; however, as the landlord filed their application to retain the security prior to the tenancy ending the tenant is not entitled to double the security deposit. Since I have authorized the landlord to retain the security deposit at this hearing, I find it appropriate to cancel the hearing scheduled for September 13, 2018, as the issue of the security deposit as be determined. I have noted the additional file number on the covering page of this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on October 16, 2015. Rent in the amount of \$963.00 was payable on the first of each month. A security deposit of \$468.00 was paid by the tenant. The tenancy ended on or about September 24, 2017.

The landlord's agent testified that the tenant's rent was subsidized and the tenant's portion was \$591.00. The agent stated that tenant income was reviewed and the tenant refused to attend their office to go over the discrepancies. The agent stated as a result the tenant no longer qualified for rent subsidy and they were required to pay the full amount of rent..

The landlord testified that the tenant continued to pay the amount of \$591.00; however, they refused to pay the market rent of \$963.00 and as a result the tenant failed to pay \$372.00 for the following months, June, July, August, and September 2017. The landlord stated that the tenant was evicted for failure to pay rent. The landlord seeks to recover unpaid rent in the amount of \$1,488.00.

The tenant acknowledged that they did not pay the market rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

In this case, the tenant's market rent was the amount of \$963.00 per month, which is subsidized. The tenant lost their subsidy as they failed to follow the request to attend the landlord's office. I find there is no authority under the Act to determine if the tenant qualifies for subsidy.

The tenant admitted that they did not pay the market rent after they were informed that they would not be entitled to any subsidy, . I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,488.00**.

I find that the landlord has established a total monetary claim of **\$1,588.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$468.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$1,120.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 08, 2018

Residential Tenancy Branch