



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. A Monetary Order in the sum of \$689.15 for non-payment of rent.
- b. An order to retain the security deposit.
- c. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenants by mailing, by registered mail to the forwarding address provided by the Tenants on September 27, 2017. The tenant acknowledged receipt of the documents.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlords are entitled to A Monetary Order and if so how much?
- b. Whether the landlord(s) are entitled to an order to retain the security deposit?
- c. Whether the landlords are entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on May 15, 2017 and end on September 30, 2017. The rent is \$650 per month payable in advance on the first day of each month. An internet charge of \$39.15 was added at the request of the Tenants. However, this was subsequently deducted as the request of the Tenants. The tenants paid a security deposit of \$500 at the start of the tenancy. The rental unit was furnished.

On September 1, 2018 the tenants contacted the landlord by e-mail stating proposing to pay the rent for September with the landlords retaining the security deposit of \$500 plus in addition they would e-transfer an additional \$150. The tenants cancelled the rent cheque for September.

The landlord responded stating that they could not accept the security deposit as rent and demanded that the rent be paid in full. The tenants failed to pay the rent and on September 3, 2017 the landlord served a 10 day Notice to End Tenancy on the Tenant(s) setting the end of tenancy for September 13, 2017. On September 11, 2017 the tenants sent the landlord a text message advising that the rental unit had been vacated.

The landlords went to the rental unit and confirmed it had been vacated. However, the tenants failed to return the keys and the parking pass and had not provided a forwarding address.

There was an exchange of emails. The tenants stated they would return the parking pass and keys if the landlord if the landlord returned the security deposit minus 10 days rent. The tenants provided the landlord with their forwarding address on September 21, 2017. The parking pass and keys were also returned although the parties were not able to provide the exact date they were returned.

The tenant gave the following evidence:

- The landlord agreed the rent should be reduced by \$39.15 as they did not have any use for the internet package. The landlord agreed his claim should be reduced by this sum.
- At the time her mother was terminally ill and she needed to spend time with her in the lower mainland..
- At no time did the tenants intend to avoid paying the rent for September. The made the proposal as it seemed to be a better way of dealing with the situation.
- The landlord served the 10 day Notice to End Tenancy on them that required them to vacate by September 13, 2017. They complied with the Notice and should only be responsible for 10 day rent.
- The landlord threatened them that if they didn't vacate as provided in the 10 day Notice he would forcibly remove them.
- The landlord is not entitled to the security deposit as no inspection was done at the start of the tenancy.

Analysis

I determined the landlord has established a claim for non-payment of rent for September 2017 in the sum of \$650 for the following reasons:

- The parties entered into a fixed term tenancy agreement that provided that the tenancy would end at the end of September. Thus the tenants are obliged to pay the rent to the end of the fixed term subject to the landlord's obligation to mitigate their loss.

- The tenants did not have a legal right to require that the landlord apply the security deposit to the rent for September. The law provides that a landlord is not required to return a security deposit to the Tenant until 15 days after the later of the end of the tenancy or the date the landlord(s) receives the tenant's forwarding address in writing.
- The landlord(s) had a legal right to serve a 10 day Notice on the Tenants when they failed to pay the rent for September when due.. The fact the tenants vacated in accordance with the Notice does not relieve the Tenants of the obligation to pay the rent. Further, the tenants failed to return the parking pass and keys in a timely manner.
- Section 72(2) of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

- I determined I have legal authority to order the security deposit to be applied against any money owed by the Tenant(s) to the landlord even though the landlord may have failed to properly conduct an inspection before or after the tenancy as the condition of the rental unit is not part of the landlord's claims.

Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of September and the sum of \$650 remains outstanding. I granted the landlord a monetary order in the sum of \$650 plus the sum of \$100 in respect of the filing fee for a total of \$750.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$500. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$250.

Conclusion:

I ordered that the landlord(s) shall retain the security deposit of \$500. In addition I ordered that the Tenants pay to the landlords the sum of \$250.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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: April 24, 2018

Residential Tenancy Branch