



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL
 MNSDS-DR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied by way of the Direct Request process for a monetary order for return of all or part of the pet damage deposit or security deposit, which was referred to this participatory hearing, joined to be heard with the landlord's application.

The parties both attended the hearing, each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the landlord indicated that all evidence had been exchanged. However, during the course of the hearing the tenant indicated that some evidence referred to by the landlord had not been received by the tenant. The tenant received Excel spreadsheets, but not copies of the utility bills. The landlord did not dispute that. Any evidence that a party wishes to rely on must be provided to the other party. Since the landlord has not provided the tenant with the landlord's evidence, I cannot consider it. All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for all or part of the security deposit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on November 1, 2021 and was to expire on November 1, 2022 thereafter reverting to a month-to-month tenancy. However, the tenancy ended on November 19, 2021. Rent in the amount of \$1,000.00 was payable on the 1st day of each month. On November 1, 2021 the landlord collected a security deposit from the tenant in the amount of \$1,000.00, which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided as evidence by both parties for this hearing.

The landlord further testified that the tenant called on November 15, 2021 and said she was moving out on November 19, and did so. The landlord does not reside in the same community, but went to see the tenant, who talked about some issues with the suite, and the landlord said the repairs would be done. However the tenant didn't agree that anyone could attend. The landlord advised that the tenant had to give the landlord an opportunity to make the repairs and asked what time the tenant would be available. The tenant would not allow it and said she was moving out.

No rent was paid for November, 2021, and the tenant didn't pay any rent at all.

The landlord contacted an agent to re-rent the unit, and a new tenant moved in on January 1, 2022. The landlord is not sure of the method(s) used by the agent to find a new tenant.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,234.61, according to my calculations:

- \$11.20 for sharing internet bill in November, 2021;
- \$11.20 for sharing internet bill in December, 2021;
- \$37.34 for sharing gas bill in November, 2021;
- \$69.78 for sharing gas bill in December, 2021;
- \$15.09 for sharing water bill from 11 to 12/2021;
- \$90.00 for sharing electricity bill from 11 to 12/2021; and
- \$2,000.00 rental fee 2 months (11 and 12/2021).

Each month when utility bills are received the landlord gives copies to tenants by email. The last one was sent on December 15, 2021. The tenant was angry because the previous tenant only paid \$800.00 per month.

The landlord made the required repairs after the tenant moved out which only took 1 day to complete.

The tenant testified that the security deposit was sent to the landlord's agent on October 26, 2021, not on November 1.

Also, the tenant moved into the rental unit on November 9 and notified the landlord about a broken fridge that day. The tenant tried to use the shower but didn't know how to use it. There had not been a walk-through at the beginning and the tenant asked the landlord to fix the shower by the next day because the tenant could only be available on November 10 and 11, 2021. On November 12 the tenant was at work and got a call at 9:30 p.m. from the landlord saying that a technician would fix it at 10:00 p.m. and gave the tenant the technician's phone number so the tenant could arrange a date with the technician. The technician said he was not available until November 13 and the tenant couldn't use the shower or the stove or the fridge.

The rental unit is a ground floor suite and another tenant lives in another suite. The tenant had to use their shower, and the landlord said they could share in the meantime.

The tenant notified the landlord on November 13, 2021 that the tenant would be moving out. On November 15 the parties met in person and the tenant told the landlord that it was not convenient to share a bathroom, it was uncomfortable for the tenant and the tenant would look for another place to live and notify the landlord of the move-out date. The landlord agreed with that; it was supposed to be move-in ready.

The tenant wanted the landlord to have the repairs finished within 2 days but from November 9 to 19 the tenant had no shower. The tenant notified the landlord on November 18 and moved out on the 19th. The tenant was not there in December so shouldn't pay utilities for that month, but the tenant agreed to utilities for November, at a pro-rated amount for utilities and rent.

Analysis

Neither party has complied with the law. A landlord may not collect more than half a month's rent as a security deposit, but the landlord collected a full month's rent, which the landlord has applied to keep.

The parties entered into a tenancy agreement for a fixed term commencing on November 1, 2021 and expiring on November 1, 2022 thereafter reverting to a month-to-month tenancy. In a fixed-term tenancy, a tenant may not move out of a rental unit prior to the date specified as the end of the fixed term. The tenant testified that the move-in date was actually November 9, 2021. Regardless of what date the tenant actually moved in, the tenancy agreement specifies that the term commences on November 1, 2021.

The tenant's position is that the landlord did not make repairs or provide the rental unit in a move-in ready condition. That is not a reason for ending the tenancy early. The tenant also suggests that the amount of rent and utilities should be pro-rated from November 9, 2021 to November 19, 2021, but that is not in accordance with the law. The landlord is entitled to the rent for November 1, 2021 and until it is re-rented because that's what the tenancy agreement specifies. However, in all cases, a landlord who makes a claim must demonstrate that the landlord did what was reasonable to mitigate any loss by advertising the rental unit for rent as soon as reasonably possible.

The landlord testified that an agent dealt with advertising and finding another tenant, and the rental unit was re-rented for January 1, 2022, but has not provided any evidence of advertising or a statement from the agent or property manager.

A landlord is required to return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit within that 15 day period. The parties agree that the landlord received the tenant's forwarding address in writing by email on December 12, 2021 and by registered mail on December 15, 2021. The landlord made the application claiming the security deposit on December 19 which is within the 15 days as required.

With respect to the landlord's claim for unpaid rent, I find that the landlord has established a claim of \$1,000.00 for rent for November, 2021, but has not provided any evidence to support the testimony that the rental unit was advertised for rent within a reasonable time and has therefore not proven mitigation for December's rent.

The landlord has not provided the utility bills and other evidence to the tenant, and therefore cannot be considered. I find that the landlord has failed to establish the claim for unpaid utilities.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$1,000.00 security deposit in full satisfaction of unpaid rent, and I grant a monetary order in favour of the landlord in the amount of \$100.00 as recovery of the filing fee. The landlord must serve the order on the tenant, and if the tenant does not pay within a reasonable time, the landlord may file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

The tenant's application is dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby order the landlord to keep the \$1,000.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: July 29, 2022

Residential Tenancy Branch