



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of a portion of her security deposit and to recover the filing fee from the Landlord for the cost of filing this application. It was apparent from the Application for Dispute Resolution that the Tenant is also seeking the return of her rent from December of 2008, so the Application for Dispute Resolution was amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of a portion of her security deposit paid in relation to this tenancy, to the return of her rent for December, and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy ended on August 01, 2008; that the Tenant was required to pay monthly rent of \$650.00; and that the Tenant paid a security deposit of \$350.00 on August 01, 2008.

The Tenant stated that she paid her rent for December of 2008. Both Landlords denied that rent was paid for December of 2008.

The Tenant stated that a pipe broke in her rental unit on the evening of December 03, 2008, at which time she advised the female Landlord of the problem. She stated that the Landlord arrived at her rental unit on the morning of December 04, 2009, at which time the kitchen area was flooded as a result of the broken pipe. She stated that the Landlord repaired the broken pipe and removed the wet drywall. She stated that she asked the Landlord to clean the kitchen and to inspect the floor for mould, but the Landlord refused to comply with her request.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Tenant stated that she was concerned about the health of her child so she did not remain in the rental unit after December 04, 2009. She stated that she moved all of her belongings out of the rental unit on December 10, 2008.

The female Landlord stated that the Tenant advised her of the broken water pipe on the morning of December 04, 2009. The female Landlord stated that the Tenant told her she was moving because she was concerned there was mould as a result of the flood. The female Landlord stated that she advised the Tenant she would have the area checked for mould but the Tenant insisted on moving out of the rental unit.

The Tenant submitted a copy of a mutual agreement to end this tenancy, which states that the female Landlord and the Tenant agree that the tenancy will end of December 18, 2008 and that the landlord will reimburse \$300.00 in rent paid for December of 2008. The male Landlord stated that his wife did not sign this mutual agreement however, the female Landlord acknowledged that she did sign the agreement. The Tenant and the female Landlord acknowledge that this mutual agreement was signed in the presence of the Landlord's real estate agent.

The male Landlord stated that the Tenant's security deposit was not returned because she damaged doors in the rental unit, and because the cost of repairing the doors was more than the security deposit. He acknowledged that he did not have written authority to retain any portion of the security deposit and that he did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant agreed that the Landlord could retain \$100.00 of her security deposit in compensation for a hole she made in the bedroom door.

The Tenant stated that she did not provide the Landlord with a forwarding address at the end of the tenancy.

Analysis

I find that the Tenant and the Landlord entered into a mutual agreement to end this tenancy on December 18, 2008. The parties signed a mutual agreement to end the tenancy on December 17, 2008, at which time the female Landlord agreed to reimburse "half of the rent for December 2008 (\$300.00)" and the Tenant agreed that the Landlord would not be responsible for any additional accommodation costs incurred by the Tenant in December.

After hearing the contradictory testimony regarding rent from December of 2008, I find, on the balance of probabilities, that the Tenant did pay her rent for December of 2008.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

In reaching this conclusion, I was strongly influenced by the mutual agreement to end tenancy. I find that it is highly unlikely that the female Landlord would have agreed to reimburse a portion of December's rent to the Tenant if the rent had not been paid in full.

I find that the Landlord must comply with the terms of the mutual agreement to end the tenancy that was signed by the female Landlord on December 17, 2008. Specifically, I find that the Landlord must return \$300.00 that was paid in rent for December of 2008.

Similarly, I find that the Tenant must comply with the terms of the mutual agreement to end the tenancy that she on December 17, 2008. Specifically, I find that she is not entitled to any other financial compensation in relation to this tenancy ending. On this basis, I dismiss the Tenant's claim for compensation for all of the rent she paid for December.

As the Landlord did not file an Application for Dispute Resolution claiming against the deposit, I find that the Landlord did not have the authority to retain any portion of the security deposit. I find that the Landlord gave him authorization at the hearing to retain \$100.00 from the security deposit as compensation for the damaged bedroom door. I therefore find that the Landlord must return the remainder of the security deposit, in the amount of \$250.00, plus interest in the amount of \$2.19.

Conclusion

I find that the Tenant has established a monetary claim of \$602.19, which is comprised of the \$300.00 that the Landlord agreed to pay when they mutually agreed to end this tenancy; \$250.00 for the return of a portion of the security deposit, \$2.19 in interest on the original amount of the security deposit, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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 *Residential Tenancy Act*.

Dated: May 04, 2009.
