



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This cross-application hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. The Tenant made Application for Dispute Resolution requesting a 10 Day Notice to End Tenancy be cancelled, more time to apply to cancel a Notice and to recover the filing fee from the Landlord for the cost of this Application for dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

The hearing commenced at 1:30 pm. During the hearing several issues emerged related to the Landlord's participation in the hearing. Initially the Landlord's translator indicated that her cell phone was cutting in and out of service. By agreement the translator and landlord exited the hearing at 1:43 pm and dialed back onto the conference call hearing at 1:50 pm from a land line. No testimony was taken during the Landlord's absence.

At 1:58 pm the Tenant was disconnected from the hearing; she immediately re-entered the hearing and no testimony was taken during her absence. During this time the translator was asked to provide the Landlord with translation of the Tenant's last statements.

At the start of the hearing the Landlord's translator indicated that she was experiencing difficulty translating some terms. I then attempted to use more common terminology and no further translation problems were mentioned by the landlord.

The parties agreed that the Tenant has moved out of the rental unit; therefore, the Tenant's Application for Dispute Resolution was withdrawn and the Landlord's request for an order of possession was withdrawn.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and loss of rent revenue?

May the Landlord retain the deposit paid?

Is the Landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement required the Tenant to pay monthly rent of \$1,000.00. The Tenant paid a security deposit of \$500.00 on September 1, 2009; the tenancy commenced on September 1, 2009. The tenancy agreement submitted as evidence indicates that rent was due at the "end of the month," the Tenant testified that rent was due on the first day of the month.

During the hearing the parties agreed that on October 2, 2009 the Tenant was served a 10 Day Notice to End Tenancy for \$1,500.00 in unpaid rent. The Tenant testified that she did not pay one half of September rent as the Landlord had promised to clean and remove items that belonged to the previous tenant and failed to do so. The Landlord disputes this alleged agreement. During the hearing the Tenant testified that she did not pay October rent due to the Landlord.

The Landlord testified that on November 22, 2009 he became aware that the Tenant had moved out of the rental unit. The Tenant testified that she did not move out on the effective date of the Notice, October 10, 2009 and that in mid-October she had asked the Landlord for more time to move from the rental unit. The Tenant testified that on October 31, 2009 she called the Landlord and told him she had moved out of the rental unit and that on November 22, 2009 the Landlord called her to demand money at which point she again told him she had moved out.

The landlord stated that they have not rented the unit, that it requires repair and that they may sell the rental unit. The Landlord testified that his real estate agent did call the Tenant on November 10, 2009 in an attempt to show the rental unit; the Tenant stated she did talk with the agent and told him she was no longer living in the unit. The

Tenant stated that if the Landlord had looked in the windows after October 31, 2009 he would have seen that her belongings were gone.

The Landlord testified that he did not attempt to rent the unit again and that, after repairs are made, he will either rent the unit or sell.

The Landlord is claiming unpaid rent in the sum of \$500.00 for September, October rent of \$1,000.00 and loss of November rent in the sum of \$1,000.00.

Analysis

The Tenant has confirmed that she owes rent for October 2009 in the sum of \$1,000.00. In the absence of any written agreement allowing the \$500.00 deduction made in September I find that the written tenancy agreement must be relied upon and that the Tenant owes the Landlord \$500.00 for the balance of September rent.

The Landlord expected the Tenant to move out of the rental unit on October 10, 2009 as the result of the Notice issued to the Tenant. On October 9, 2009 the Tenant applied for Dispute Resolution requesting cancellation of the Notice.

I find, on the balance of probabilities, that by October 31, 2009 the Landlord was aware that the tenant had moved out of the rental unit and that the Landlord was planning on selling the unit. I base this decision on the testimony of the Tenant who stated that on November 10, 2009 she told the real estate agent that she was no longer in the rental unit. I also base this decision on the testimony of the Landlord who indicated that he had potential purchasers viewing the rental unit and that he did not intend to immediately rent the unit after the Tenant had vacated. As the Landlord did not advertise the rental unit and did not intend to immediately rent the unit I find that the Landlord has not experienced a loss of revenue for November and dismiss without leave to reapply the claim for loss of revenue.

I find that the Tenant has not paid rent in the amount of \$1,500.00 for September and October 2009 and that the Landlord is entitled to compensation in that amount.

I find that the Landlords application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of \$500.00 in partial satisfaction of the monetary claim.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,550.00, which is comprised of \$1,500.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of **\$500.00**, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of **\$1,050.00**. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord's claim for loss of November 2009 rent revenue is dismissed without leave to reapply.

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: November 25, 2009.

Dispute Resolution Officer