



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This 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 Landlord and the female Tenant were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant, via registered mail, at the service address noted on the Application, on November 19, 2010. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement.

The female Tenant stated that she vacated the rental unit sometime during the third week of November of 2009, that she received the Application for Dispute Resolution and Notice of Hearing that was sent to her at the rental unit prior to vacating the rental unit, that the male Tenant remained in the rental unit until November 27, 2010, and that the male Tenant told her he did not receive a copy of the Application for Dispute Resolution and Notice of Hearing.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Landlord mailed a copy of the Application for Dispute Resolution and Notice of Hearing to the rental unit on November 19, 2010. On the basis of the evidence presented by the female Tenant and in the absence of evidence to the contrary, I find that the male Tenant was living in the rental unit until November 27, 2010. In the absence of evidence from the male Tenant that shows he did not receive the documents that were mailed to him, I find that he was served with notice of this hearing in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing.

I placed little weight on the female Tenant's statement that she had been told by the male Tenant that he did not receive a copy of the Application for Dispute Resolution and Notice of Hearing. I find that it is entirely possible that the male Tenant was being dishonest when he advised the female Tenant that had not received these documents. I find it equally possible that the male Tenant did not receive the documents because he elected not to pick the documents up from Canada Post after being notified of their existence.

Neither the Landlord nor the Tenant served evidence on the other party in relation to this dispute and, therefore, no documentary evidence has been considered when making a determination in this matter.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 15, 2009, that the Tenants were required to pay monthly rent of \$1,100.00, and that they paid a security deposit of \$550.00. The Landlord believes the rent was due on the first day of each month and the Tenant believes the rent was due on the fifteenth day of each month. No documentary evidence was submitted to corroborate either position.

The Landlord and the Tenant agree that a Dispute Resolution Officer previously determined that this tenancy would end on November 30, 2010. The parties agree that the same Dispute Resolution Officer authorized the Tenants to reduce their rent arrears by \$445.00.

The Agent for the Landlord stated that according to his ledger the Tenant has made the following payments since this tenancy began:

November of 2009 - \$2,600.00
December of 2009 - \$1,300.00
January 10, 2010 - \$2,700.00
February 10, 2010 - \$1,650.00
March 10, 2010 - \$800.00
April 10, 2010 - \$1,400.00
July 10, 2010 - \$1,245.55
August 10, 2010 - \$550.00

Total - \$12,245.55

The Tenant stated that according to receipts in her possession the Tenants made the following payments since this tenancy began:

November 9, 2009 - \$1,300.00
November 20, 2009 - \$1,300.00
December 4, 2009 - \$1,300.00
December 18, 2009 - \$900.00
December 31, 2009 - \$900.00
January 15, 2010 - \$900.00
January 29, 2010 - \$1,100.00
February 15, 2010 - \$550.00
March 25, 2010 - \$800.00
April 8, 2010 - \$700.00
April 22, 2010 - \$700.00
May 06, 2010 - \$1,100.00
July 15, 2010 - \$1,245.55
August 03, 2010 - \$550.00

Total - \$13,345.55

The Tenant stated that part of the reason they did not pay all of the rent due is that there were significant deficiencies with the rental unit and she did not believe she should be obligated to pay all of the rent that was due. The Agent for the Landlord stated that the deficiencies with the rental unit were the subject of a previous dispute resolution hearing and that the Tenant has already been compensated for those deficiencies.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that this tenancy began on June 15, 2009 and that it ended on November 30, 2010, which is a period of 17.5 months.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenants were required to pay monthly rent of \$1,100.00. I therefore find that they were required to pay rent of \$19,250.00 for the period between June 15, 2009 and November 30, 2010.

On the basis of the undisputed evidence presented at the hearing, I find that a Dispute Resolution Officer has previously determined that the Tenant can reduce any rent payable to the Landlord by \$445.00. I therefore find that the Tenants were only obligated to pay \$18,805.00 for the period between June 15, 2009 and November 30, 2010.

The Landlord and the Tenant agree that the Tenants paid at least \$12,245.55 during this tenancy. The Tenant contends that they paid an additional \$1,100.00 that has not been reported by the Landlord.

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances the burden of proving that the Tenant paid \$12,245.55 in rent, as the Landlord contends, rather than \$13,345.55, as the Tenant contends, rests with the Landlord. I find that the Landlord has submitted insufficient evidence to show that the Tenant did not pay \$13,345.55 in rent during this tenancy. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Landlord's position, such as a detailed ledger, or that refutes the Tenant's testimony.

As the Tenant has acknowledged that they did not pay \$5,459.45 of the \$18,805.00 in rent that was due for the period between June 15, 2009 and November 30, 2010, I find that rent is in arrears by \$5,459.45. Section 26 of the *Act* stipulates that tenants must pay rent when it is due whether or not the landlord complies with the *Act*. This section requires tenants to pay rent in spite of the fact there may be deficiencies with the rental unit. I therefore find that the Tenants must pay the Landlord \$5,459.45 in unpaid rent.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$5,509.45, which is comprised of \$5,459.45 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$4,959.45. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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: March 25, 2011.

Residential Tenancy Branch