



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, FF, O
For the landlord: MNSD, OPR, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a monetary order for a return of his security deposit and to recover the filing fee.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, an order of possession due to unpaid rent and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue-The tenant has vacated the rental unit since the filing of the landlord's application and therefore it was no longer necessary to consider the landlord's request for an order of possession for the rental unit.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for the return of his security deposit and to recover the filing fee?

Is the landlord entitled to a monetary order, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

The undisputed testimony is that this tenancy started on July 15, 2011, ended on September 30, 2012, when the tenant vacated the rental unit, monthly rent was \$960.00 and the tenant paid a security deposit of \$480.00 at the beginning of the tenancy.

Tenant's application-

The tenant requests a return of his security deposit as the tenancy has ended. When questioned, the tenant confirmed not having sent a written forwarding address to the landlord after the tenancy ended on September 30, 2012.

Landlord's application-

The landlord stated that on September 5, 2012, the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), via posting on the door, listing an amount of \$960.00 as unpaid rent as of September 1, 2012. The effective move out date listed on the Notice was September 15, 2012. Section 90 of the Act states that a document served in this manner is deemed served three days after it was posted. Thus the effective move out date is automatically corrected to September 18, 2012.

The landlord submitted that the tenant has not made a rent payment since issuance of the Notice and vacated at the end of September 2012, owing rent for that month.

The tenant agreed that rent for September was not paid.

The landlord requests authority to retain the tenant's security deposit in partial satisfaction of her monetary claim and a monetary order for the balance due for September's rent.

Analysis

Upon hearing from the parties and considering the landlord's evidence, I am satisfied that the tenant owed the landlord rent when the Notice was issued, that he did not pay the outstanding rent to the landlord within five days of receiving the Notice and the tenant did not establish that he had the legal right to withhold the rent owed.

I therefore find that the landlord has established a monetary claim for \$1010.00 for unpaid rent of \$960.00 for September 2012 and recovery of the filing fee of \$50.00, which I have granted due to the landlord's successful application.

Conclusion

Due to the reasons listed above, I find that the landlord has established a total monetary claim of \$1010.00.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$480.00 in partial satisfaction of the claim.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due, in the amount of \$530.00, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of the Court.

As I have allowed the landlord to retain the tenant's security deposit, I dismiss the tenant's application, without leave to reapply.

As I have dismissed the tenant's application, I also dismiss their claim for recovery of the filing fee.

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: October 12, 2012.

Residential Tenancy Branch