



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR and FF

Introduction

This hearing was convened on the landlord's application of September 14, 2012 seeking a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order and, if so, in what amount?

Background and Evidence

There was no rental agreement submitted into evidence but, according to the best recollection of both parties, this tenancy began on June 1, 2012. The tenant moved out at the end of February 2012 but the parties disagree on whether the landlord had accepted notice given by email. Rent was \$700 per month and the landlord holds a security deposit of \$350 pad at the beginning of the tenancy.

During hearing the landlord stated and the tenant concurred that the tenant had not paid rent for January or February of 2012. The tenant stated that he had withheld the rent because of an ongoing problem with a roof leak which the landlord testified had been resolved some time earlier.

The parties agreed that there was no move-out condition inspection report and that the landlord had retained the security deposit without the tenant's consent or having made application to make claim on it within 15 days of the end of the tenancy or receipt of the tenant's forwarding address as required under section 38(1) of the *Act*.

Analysis

Adjudicating this matter was made more difficult by the fact that both parties have breached the *Act*.

The landlord breached by failing to arrange for a move-out condition inspection report as required by section 35 of the *Act* and by failing to obtain the tenant's consent or make application to retain the security deposit as required by section 38(1).

The tenant breached the *Act* by failing to give his notice to end the tenancy in the proper written form as required by section 45(4) and failing to pay rent.

As to the withholding of rent, section 26 of the *Act* states that:

- 1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

A right to withhold under the *Act* would include expenditure by the tenant property made by the tenant under section 33 of the *Act* for emergency repairs or an order of the director, neither of which is applicable in the present matter.

Therefore, I find that the tenant must pay the rent for January and February of 2012. However, I accept the evidence of the tenant that the landlord had accepted his email notice to end the tenancy on February 29, 2012 and I decline to award the loss of rent for March 2012.

In addition, I find that the landlord should retain the security deposit in set off against the unpaid rent.

The parties have agreed that, as this decision has had to adapt to breaches by both, they both accept this decision as a final settlement of this tenancy and neither will bring a further action against the other.

Due to the omission of pertinent evidence, I decline to award the filing fee.

Thus, I find that the tenant owes to the landlord an amount calculated as follows:

Rent for January 2012	\$ 700.00
Sub total	\$1,400.00
Less retained security deposit (no interest due)	- <u>350.00</u>
TOTAL remaining owed by tenant to landlord	\$1,050.00

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,050.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: December 04, 2012.

Residential Tenancy Branch