



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties 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 submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant; to compensation for expenses that resulted from a premature end to this tenancy; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this was a fixed term tenancy that began on December 01, 2009 and was scheduled to end on September 30, 2010; the Tenant was required to pay monthly rent of \$850.00 plus thirty percent of utility charges; that rent was due on the first day of each month; that the Tenant paid a security deposit of \$425.00 on November 09, 2009; that on March 24, 2010 the Tenant gave the Landlord written notice of her intent to vacate the rental unit on May 31, 2010; and that the Tenant vacated the rental unit on May 30, 2010.

The Landlord stated that she was able to find a new tenant for the rental unit, who moved into the rental unit on May 31, 2010. The Landlord stated that she agrees to return \$25.65, which is the equivalent of one month's rent, as she was able to collect his revenue from the new tenant. She stated that this amount has not yet been reimbursed and she asked that it be deducted from her monetary claim.

The Landlord stated that she rented the rental unit to the new tenant for reduced rent of \$795.00. The Landlord and the Tenant agree that the Tenant gave the Landlord written authorization to retain \$220.00 from the Tenant's security deposit as compensation for lost revenue. The \$220.00 payment represents the revenue lost due to the fact the Landlord is collecting \$55.00 less rent for the last four months of the fixed term of this tenancy.

The Landlord and the Tenant agree that the Tenant gave the Landlord written authorization to retain \$164.00 from the Tenant's security deposit as compensation for advertising costs incurred by the Landlord for finding a new tenant.

The Landlord is seeking compensation, in the amount of \$650.00, for the time she spent finding a new tenant, which included placing advertisements, which took approximately two hours; answering approximately seventy telephone calls and approximately 30 emails, which took approximately six hours, and showing the suite on five occasions. The Landlord stated that she lives a considerable distance from the rental unit and that it takes her approximately three hours to show the suite. She stated she is seeking compensation at an hourly rate of \$25.00 which, by my calculations, equates to \$575.00.

The Landlord is seeking compensation, in the amount of \$208.00, for vehicle expenses related to showing the rental unit on five occasions. The Landlord stated that estimates that she needed to travel 80 km for each showing and she is seeking compensation for these travel expenses at a rate of \$0.52 per km.

The Landlord is seeking compensation, in the amount of \$46.97, for gas charges, and \$22.47 for hydro charges. The Landlord and the Tenant agree that the Tenant is required to pay 30% of the gas and hydro charges for this residential complex; that she has paid these charges directly to the Tenant living upstairs for the duration of this tenancy; and that she has typically paid slightly more than her portion of the charges.

The Landlord submitted copies of a hydro and gas bill which were received by the upstairs tenants after this tenancy ended. The Landlord stated that she paid the upstairs tenants for the Tenant's portion of these hydro and gas bills; that she advised the upstairs tenants that she would collect payment for these charges from the Tenant and that she had told this Tenant not to pay the hydro and gas charges for the last month to the upstairs tenant.

The Tenant stated that she received copies of the hydro and gas bill in the Landlord's evidence package; that on August 17, 2010 she paid the upstairs tenant \$100.00 for her portion of those charges; that she has a receipt for those payments, although she did not submit it in evidence; and she does not recall the Landlord telling her not to pay the upstairs tenants the hydro and gas charges from the last month of the tenancy.

The Landlord stated that she has not spoken with the upstairs tenants regarding the hydro and gas charges since August 17, 2010 so she does not know if the Tenant paid them for the hydro and gas charges from the last month of the tenancy. The Landlord argued that the Tenant should not have paid the gas and utility charges to the upstairs tenants as she knew these charges were the subject of this dispute resolution hearing.

Analysis

As the Tenant has already given the Landlord written permission to deduct \$384.00 from her security deposit as compensation for lost revenue and advertising costs, I find that the Landlord is entitled to retain this amount from the Tenant's security deposit.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In the absence of evidence to the contrary, I accept that the Landlord's testimony that she spent approximately eight hours advertising the rental unit and responding to people who expressed an interest in renting the unit. I find this to be a reasonable amount of time. I find that the Landlord is entitled to compensation of \$160.00 for this time, which is calculated at an hourly rate of \$20.00, which I find to be reasonable compensation for labor of this nature.

In the absence of evidence to the contrary, I accept the Landlord's testimony that she showed the rental unit on five occasions. While I accept the Landlord's evidence that it takes her approximately three hours to show the unit because she lives in a neighboring community, I find that the Tenant should not be responsible for travel time that results from the Landlord's decision to conduct business in a community that is a significant distance from her home. I therefore find that the Landlord is only entitled to compensation for three hours of time, which I believe is reasonable compensation for showing the rental unit on three occasions. I find that the Landlord is entitled to compensation of \$60.00 for this time, which is calculated at an hourly rate of \$20.00, which I find to be reasonable compensation for labor of this nature.

I find that the Tenant should not be responsible for travel costs that flow from the Landlord's decision to conduct business in a community that is a significant distance from her home. I therefore dismiss the Landlord's claim for compensation for travel costs, in the amount of \$208.00.

In determining that the Tenant should not be entitled to costs that flow from the Landlord's decision to conduct business in a community that is a significant distance from her home, I was influenced, in part, by the fact that the Landlord did not discuss the issue of liquidated damages with the Tenant prior to entering into this tenancy agreement and I have no evidence to show that she advised the Tenant that the

Landlord's costs for re-renting the rental unit would exceed costs typically incurred by a landlord.

In determining that it would be unreasonable to award compensation based on where the Landlord resides, I was influenced, in part, by the fact that such a determination would place a tenant at a significant disadvantage if their landlord resides in a distant city or country.

Based on the undisputed evidence presented at the hearing, I find that the Tenant was required to pay 30% of the gas and hydro charges for the residential complex to the upstairs tenant and that she typically paid those charges to the upstairs tenant. In the absence of evidence to the contrary, I find that the Tenant paid her portion of the gas and hydro charges arising from the last month of tenancy on August 17, 2010 when she gave the upstairs tenants \$100.00. I therefore dismiss the Landlord's claim for compensation of \$69.44 for those bills.

In reaching this conclusion I was influenced, in part, by the absence of evidence from the upstairs tenants that refute the Tenant's claim that she paid \$100.00 on August 17, 2010; by the fact that the Landlord did not discuss payment of the gas and hydro charges with the upstairs tenants since August 17, 2010 and is unable to refute that the payment was made; by the fact that the Tenant does not recall the Landlord telling her not to pay the upstairs tenants for the gas and hydro charges from the last month of her tenancy; and by the absence of evidence that corroborates the Landlord's statement that she told the Tenant not to pay the upstairs tenants for the gas and hydro charges from the last month of her tenancy.

In determining this matter, I placed little weight on the Landlord's argument that the Tenant should not have paid the gas and hydro charges from the last month of her tenancy because the matter was to be determined at this hearing. As the Tenant typically paid her portion of these charges to the upstairs tenants upon receiving copies of the bills, I find it entirely reasonable for the Tenant to pay a debt that she acknowledges is owed in the manner that she paid those debts during her tenancy.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$654.00, which is comprised of the \$384.00 the Tenant agreed the Landlord could retain from the security deposit; \$220.00 for time the Landlord spent finding new tenants; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I find that this monetary claim should be reduced by \$25.65, which is the amount that the Landlord agreed to reimburse the Tenant for the equivalent of one day's rent for May 31, 2010.

I hereby authorize the Landlord to retain the security deposit of \$425.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$203.35. 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.

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 29, 2010.

Dispute Resolution Officer