



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent. It is very apparent from information on the Application for Dispute Resolution that the Landlord is also seeking to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution, and the Landlord's Application for Dispute Resolution has been amended accordingly.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit.

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 relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to a monetary Order for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Residential Tenancy Act (Act)*.

The issue to be decided in relation to the Tenant's Application for Dispute Resolution is whether the Tenant is entitled to the return of her security deposit, pursuant to section 38 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 15, 2010; that the Tenant was required to pay monthly of \$1,000.00 on the fifteenth day of each month; that the Tenant paid a security deposit of \$500.00; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that she does not recall if she provided the Landlord with her forwarding address, in writing, at the end of the tenancy. She stated that she did provide the Landlord with a service address when she served copies of the Tenant's Application for Dispute Resolution on the Landlord on June 25, 2010.

The Landlord stated that the Tenant did not provide the Landlord with her forwarding address, in writing, at the end of the tenancy. She stated that she did receive a service address for the Tenant when the Tenant served her with copies of the Tenant's Application for Dispute Resolution on June 25, 2010.

The Landlord and the Tenant agree that on June 04, 2010 the Tenant gave the Landlord written notice of her intent to vacate the rental unit on June 15, 2010.

The Landlord is claiming compensation, in the amount of \$500.00, for loss of revenue that resulted from the late notice provided by the Tenant. The Landlord stated that she was able to rent a portion of the rental unit to another occupant on June 16, 2010, at a monthly rate of \$500.00. The Landlord stated that she was able to rent the studio portion of the rental unit to another occupant on July 16, 2010, at a monthly rate of \$450.00. As the Landlord was able to collect rent of \$500.00 for the period between June 16, 2010 and July 15, 2010, she is only seeking compensation for unpaid rent in the amount of \$500.00, which is the revenue she lost due to the Tenant not paying rent on June 15, 2010.

The Tenant stated that she rented the entire residential complex, including the studio portion of the rental unit. She stated that the studio portion of the complex was not suitable for occupation when she rented it because it did not have kitchen appliances.

Analysis

The evidence shows that this Tenant was required to pay monthly rent of \$1,000.00 on the fifteenth day of each month; that on June 04, 2010 she provided written notice of her intent to end this tenancy on June 15, 2010; and that she vacated the rental unit on June 15, 2010. Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is

not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

To end this tenancy on June 15, 2010 in accordance with section 45 of the *Act*, the Tenant was required to give notice of her intent to vacate on, or before, May 14, 2010.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was given on June 04, 2010 was July 15, 2010. Therefore, I find that the notice to end tenancy that was given on June 04, 2010 served to end this tenancy on July 15, 2010.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. As the Tenant had not properly ended this tenancy by June 15, 2010, I find that the Tenant was obligated to pay rent when it was due on June 15, 2010 or to compensate the Landlord for any losses incurred by the Landlord as a result of the early end to the tenancy.

Based on the testimony of the Landlord and in the absence of any evidence to the contrary, I find that the Landlord was able to rent a portion of this rental unit to another occupant on June 16, 2010, for \$500.00 per month. I find that she was able to rent the other portion of the rental unit to another occupant on July 15, 2010 for \$450.00 per month. As the Landlord was able to collect rent of \$500.00 for the period between June 16, 2010 and July 15, 2010, I find that the Landlord experienced a loss of revenue of \$500.00 for this period that she would not have experienced if the Tenant had paid the \$1,000.00 in rent that was due on June 15, 2010. On this basis, I find that the Landlord is entitled to compensation of \$500.00.

I find that the Landlord's 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.

Based on the testimony of the Landlord and in the absence of contradictory testimony from the Tenant, I find that the Tenant did not provide the Landlord with her forwarding address after this tenancy ended and prior to filing the Tenant's Application for Dispute Resolution.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Tenant filed her Application for Dispute Resolution prematurely. As the Tenant had not provided the Landlord with her forwarding address by the time she filed her Application for Dispute Resolution, I find

that the Landlord was not yet obligated to return the Tenant's security deposit. On this basis, I dismiss the Tenant's application to recover her security deposit.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$550.00, which is comprised of \$500.00 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, 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 \$50.00. 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.

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 09, 2010.

Dispute Resolution Officer