



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, 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 compensation for unpaid rent, damage to the rental unit, compensation for damage or loss under the Act, 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 provided affirmed testimony that on July 23, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant by registered mail. A Canada Post tracking number was provided as evidence of service. The mail was returned to the landlord as unclaimed.

The landlord obtained the tenant's address through the post-dated cheques the tenant had written for rent. The landlord believed, from emails sent to them that originated from the tenant's account that the tenant had not in fact moved into the rental unit. On July 14, 2010, the landlord went to the tenant's business address the tenant had provided the landlord prior to signing the tenancy agreement. The individuals at the business address were the first tenants to operate a business in that location and did not know who the tenant was.

The landlord then immediately went to the address the tenant had supplied on her post-dated cheques. When they arrived at this location they met the tenant's spouse, who went to the house and asked the tenant to come out to speak with the landlord; she refused. The tenant's spouse expressed surprise when told that his spouse had rented a unit from the landlord.

The vehicle that the tenant had with her at the start of the tenancy was present in the driveway, the address matched the tenant's driver's licence that the landlord had viewed at the start of the tenancy and was the same address that appeared on the post-dated cheques issued by the tenant; the landlord stated the evidence was overwhelming that the tenant lived at this address with her spouse and that she may not have ever actually lived in their rental unit.

Registered mail was then sent to the tenant's address notifying her of this hearing.

I find that the landlord has established that the tenant resided at the address supplied on her cheques and driver's licence and that this was confirmed when the landlord attended at the property on July 14, 2010, and spoke with the tenant's spouse who attempted to have the tenant come out of the house.

These documents are deemed to have been served in accordance with section 89 of the Act, on the fifth day after mailing; however the tenant did not collect her registered mail and failed to appear at the hearing.

Preliminary Matter

I have considered only those matters outlined in the details of the dispute section of the application; compensation for unpaid rent, loss of rent, liquidated damages, key, fob and locksmith costs.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent?

Is the landlord entitled for compensation for damage or loss under the Act?

May the landlord retain the deposit in partial satisfaction of the claim for compensation?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement signed by the parties on April 29, 2010, indicated that this was a fixed term tenancy that commenced on April 23, 2010, ending effective April 30, 2011. Rent was \$1,875.00 per month, due before the first day of each month. A deposit in the sum of \$975.00 was paid.

The tenancy agreement contained a liquidated damages clause, term 4, that required payment in the sum of one half one month's rent to cover administrative costs and to mitigate the costs of re-renting should the tenant ended the fixed term agreement.

In June the landlord issued the tenant a 10 day notice for unpaid rent and served this by registered mail on June 15; a copy of the notice was found in the unit after the tenant had vacated. The notice ending tenancy had an effective vacancy date of June 30 and the landlord believes the tenant vacated the unit on June 30 or July 1, 2010; they found the unit empty on July 2, 2010.

The landlord did not receive June rent owed and is claiming loss of July rent revenue as the unit was so dirty it could not be rented again until August. The landlord provided photographs taken of the unit after the tenant vacated; the photographs show a unit that was not left in a reasonably clean state. The unit was 2 years old and had been given to the tenant in like-new condition. No condition inspection reports were completed.

The landlord did not receive the keys from the tenant and supplied a July 2, 2010, receipt for the cost of a service call and replacement of keys in the sum of \$96.05.

The landlord supplied a July 2, 2010, receipt for the cost of replacement key fob and garage remote purchased from the building management company in the sum of \$125.00. The tenant did not return these items.

The landlord had to drill out the mail box key and purchase a new key; the cost was \$11.00 but the landlord did not submit verification of this amount.

A replacement fireplace remote cost \$16.00 for courier service, but a receipt was not submitted to verify this cost.

The tenant did not pay rent owed and breached the fixed term tenancy agreement, forcing the landlord to incur costs to clean and re-rent the unit. The landlord is claiming liquidated damages in the sum of \$975.00, as provided by term 4 of the tenancy agreement.

The landlord believes that there has been an attempted fraud, as they have received emails from the tenant's account sent by a 3rd party who spoke for the tenant. The landlord discovered 2 possible aliases for the tenant, both of which have been included within the application as "also known as." An email sent to the landlord on July 6, 2010, by a 3rd party, stated that the tenant "never had a chance to move into the Condo, she was too busy in Alberta and the sale of her house fell through..." This indicated that the tenant had never left her previous residence; the one where the landlord's located her on July 14, 2010. Emails sent to the landlord during the tenancy indicated the tenant was in Alberta to care for her ill father.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

In the absence of evidence to the contrary and the tenant who was served with notice of this hearing, I find that the tenant has not paid rent in the amount of \$1,875.00 for June, 2010, and that the landlord is entitled to compensation in that amount.

I find, from the evidence before me, that the tenant was responsible for the ending of this fixed-term tenancy agreement by her failure to pay rent for June. The landlord was unable to obtain new occupants for July as the landlord had issued a notice ending tenancy, allowing the tenant time to either pay her rent or dispute the notice. The tenant did neither and vacated the unit sometime around the effective vacancy date of the notice at the end of June.

Therefore, due to the breach of the tenancy agreement by the tenant and the need for cleaning of the unit, which both caused delays; I find that the landlord is entitled to loss of rent revenue for July in the sum of \$1,875.00. The landlord mitigated their loss by preparing the unit for new tenants and had occupants in the unit by August 1, 2010.

I find that the liquidated damages clause is a reasonable reflection of the costs incurred by the landlord to re-rent the unit as the result of the tenant’s breach of the tenancy agreement; therefore, I find that the landlord is entitled to compensation for liquidated damages in the sum of one half of one month’s rent in the sum of \$937.50, as provided by clause 4 of the tenancy agreement signed by the parties.

Based on the verification of costs provided by the landlord I find that the landlord is entitled to compensation for the cost of keys, the garage fob and key fob in the sum of \$221.05.

I find that the landlord is entitled to a nominal amount for the cost of the fireplace remote and mail box key expenses in the sum of \$10.00.

Therefore, the landlord is entitled to the following:

- \$1,875.00 June, 2010 rent;
- \$1,875.00 loss of July, 2010, rent revenue;
- \$937.50 liquidated damages; and
- \$231.05 in damages.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$950.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$5,018.55, which is comprised of unpaid rent, damage and loss under the Act, damage to the unit and the \$100.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$950.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of **\$4,068.55**. 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: December 15, 2010.

Dispute Resolution Officer