



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, 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 damage to the rental unit; for a monetary Order for unpaid rent and utilities; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Landlord applied to amend the Application for Dispute Resolution to include a claim for loss of revenue for the month of January of 2011. I declined the Landlord's application to amend the Application for Dispute Resolution, as the Tenant did not attend the hearing and had not been previously advised that the Landlord was seeking compensation for loss of revenue from January. The Landlord made no further requests to amend the Application for Dispute Resolution.

The Landlord stated that he personally served the Tenant with copies of the Application for Dispute Resolution, the Notice of Hearing, and evidence on November 01, 2010. The Landlord submitted a copy of the Notice of Hearing on which the Tenant acknowledged service of these documents on November 01, 2010. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/utilities, to compensation for loss of revenue from November and December of 2010, for compensation for damage to the rental unit, for compensation for furniture rented from the Landlord, to collect late fees and moving fees, to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord submitted a tenancy agreement, which is signed by the Tenant, which indicates that the Tenant and the Applicant entered into a fixed term tenancy agreement that began on June 01, 2010 and was to end on January 31, 2011; that the Tenant was required to pay monthly rent of \$495.00 on the first day of each month; and that the Tenant paid a security deposit of \$247.50.

The Landlord submitted a copy of an email from the Tenant, dated October 14, 2010, in which the Tenant advised the Landlord that he vacated the rental unit on October 14, 2010. The Landlord stated that the Tenant did not provide any other notice of his intent to vacate the rental unit.

The Landlord stated that the Tenant did not pay rent for October of 2010 and he is seeking compensation for unpaid rent, in the amount of \$495.00.

The Landlord stated that the rental unit was advertised on three popular websites on October 19, 2010 and was advertised continually until the rental unit was rented on February 01, 2011. The Landlord has applied for loss of revenue for the months of November and December of 2010.

The Landlord is seeking compensation, in the amount of \$75.00, as the Tenant did not pay rent when it was due on October 01, 2010, November 01, 2010, and December 01, 2010. In the addendum to the tenancy agreement, which was submitted in evidence, the Tenant agreed to pay a fee of not more than \$25.00 whenever he is late paying rent.

The Landlord is seeking compensation, in the amount of \$50.00, for a "move out fee". In the addendum to the tenancy agreement the Tenant agreed to pay a "move-out fee" of \$50.00 which will be deducted from his security deposit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$45.00, for cleaning the rental unit. The Landlord stated that the Tenant left a couch and other items in the rental unit at the end of the tenancy and that the room needed vacuuming. The Landlord submitted photographs that demonstrate the rental unit needed cleaning. The Landlord submitted a receipt to show that this cost was incurred.

The Landlord is seeking compensation, in the amount of \$241.79 for replacing the curtains in the rental unit. The Landlord stated that there were new curtains in the rental unit at the beginning of the tenancy and that the curtains were missing at the end of the tenancy. The Landlord submitted a Condition Inspection Report that was completed on June 01, 2010 and appears to be signed by the Tenant, which indicates that the windows/window coverings in the room were in good condition at the beginning of the tenancy.

The Landlord stated that when he and the Applicant completed the Condition Inspection Report on October 18, 2010, in the absence of the Tenant, he noticed that the curtains

were missing. The Landlord submitted a receipt for curtains, dated October 29, 2010, in the amount of \$241.79.

The Landlord stated that the Tenant did not provide a forwarding address at the end of the tenancy. He stated that he sent the Tenant an email on October 14, 2010, in which he offered to inspect the rental unit with the Tenant on October 15, 2010 or October 16, 2010. He stated that he also posted a Notice of Final Opportunity to Schedule a Condition Inspection on the door of the rental unit, in which he offered to complete the inspection on October 17, 2010.

The Landlord is seeking compensation, in the amount of \$74.19, for utility charges that were incurred during this tenancy. The addendum to the tenancy agreement indicates that the Tenant must pay an equal share of utility charges incurred during the tenancy. The Landlord stated that five people occupied the residential complex during this tenancy and that the Tenant was, therefore, obligated to pay 1/5 of all utility charges. The Landlord submitted a bill from the City of Victoria for utility charges for the period between April 16, 2010 and September 09, 2010, in the amount of \$362.79.

The Landlord is seeking compensation, in the amount of \$55.06, for hydro charges that were incurred between July 17, 2010 and October 14, 2010. The addendum to the tenancy agreement indicates that the Tenant must pay an equal share of utility charges incurred during the tenancy. The Landlord stated that five people occupied the residential complex during this tenancy and that the Tenant was, therefore, obligated to pay 1/5 of all hydro bills. The Landlord submitted a hydro bill for the period ending on July 16, 2010 but he did not submit a bill for the period between July 17, 2010 and October 14, 2010. The Landlord stated that he has a bill from that period, in the amount of \$322.95, but he neglected to submit it in evidence.

The Landlord is seeking compensation, in the amount of \$20.00, for furniture rented by the Tenant during this tenancy. The Landlord submitted a "Renting Agreement" in relation to this agreement, which he contends was entered into as part of the tenancy agreement. I note that the tenancy agreement indicates that there is a one page addendum attached to the agreement and that addendum was submitted in evidence. There is no mention in the tenancy agreement of a second addendum that relates to furniture rental.

Analysis

On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant and the Applicant entered into a fixed term tenancy agreement that began on June 01, 2010 and was to end on January 31, 2011; that the Tenant was required to pay monthly rent of \$495.00 on the first day of each month; and that the Tenant paid a security deposit of \$247.50.

On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay rent when it was due on October 01,

2010. As he was required to pay rent on October 01, 2010, pursuant to section 26 of the *Act*, I find that the Tenant owes the Applicant \$495.00 in rent from October of 2010.

On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant ended this tenancy on October 14, 2010 when he vacated the rental unit. I find that the Tenant did not comply with section 45(2) of the *Act* when he 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 Applicant for any losses the Applicant experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

I find that the Landlord made reasonable efforts to advertise the rental unit but was unable to enter into a new tenancy agreement with another occupant for November and December of 2010. I therefore find that the Applicant experienced a loss of revenue during these months, in the amount of \$990.00, and that the Tenant must compensate the Applicant in this amount.

As the Tenant did not pay his rent when it was due on October 01, 2010 and the addendum to the tenancy agreement requires the Tenant to pay a maximum fee of \$25.00 whenever rent is not paid when it is due, I find that the Applicant is entitled to a late fee of \$25.00 for the month of October of 2010.

Although I have awarded the Applicant compensation for loss of revenue for the months of November and December of 2010, I find that this tenancy ended on October 14, 2010, pursuant to section 44(1)(d) of the *Act* when the Tenant vacated the rental unit. As the tenancy ended on October 14, 2010 the Tenant was not obligated to pay rent on the first day of November or the first day of December. As the Tenant was not obligated to pay rent on November 01, 2010 or December 01, 2010, I dismiss the Applicant's claim for late fees for those months.

Section 7(1)(f) of the *Act* stipulates that a landlord may charge a "move-out fee" if that fee is charged to the landlord by a strata corporation. As the Applicant has not established that he was charged a move out fee by a strata corporation in relation to this tenancy, I find that the Applicant is not authorized to collect this fee pursuant to section 7(1)(f) of the *Act*. I am unaware of any other section of the legislation that permits a landlord to collect a move out fee.

Section 5 of the *Act* prohibits landlords and tenants from contracting out of the *Act* or regulations. I therefore find that the Applicant does not have authority to collect a fee that is not permitted by the legislation, even if the Tenant agrees to pay that fee in the tenancy agreement. For these reasons, I dismiss the Applicant's claim to collect a move-out fee in any amount.

On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition at the end of the tenancy.

In reaching this conclusion I was heavily influenced by the photographs submitted in evidence. I therefore find that the Applicant is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$45.00.

On the basis of the Landlord's testimony and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the curtains in the rental at the end of the tenancy. In reaching this conclusion I was heavily influenced by the photographs submitted in evidence. I therefore find that the Applicant is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$241.79.

On the basis of the Landlord's testimony and in the absence of evidence to the contrary, I find that the Tenant was obligated to pay twenty percent or 1/5 of all utility charges incurred during this tenancy.

On the basis of the City of Victoria utility bill that was submitted in evidence, I find that utility charges of \$362.79 were incurred between April 16, 2010 and August 15, 2010, which is a period of 121 days. As the Tenant resided in the rental unit for 76 days in this billing period, I find that he is obligated to pay his portion of 62.8% of the bill, which is \$227.83. Twenty percent of \$227.83 is \$45.56. I find that the Tenant must pay \$45.56 of the utility bill for the period between April 16, 2010 and August 15, 2010.

I dismiss the Applicant's claims for compensation for the remainder of the utility charges from the City of Victoria, in the amount of \$28.63, for the period between August 16, 2010 and October 14, 2010. In addition to establishing that a tenant is obligated to pay utility charges, a landlord must also accurately establish the cost of those charges. In these circumstances the Landlord has not submitted evidence to show the amount of utility charges incurred between August 16, 2010 and October 14, 2010. As the Landlord has failed to submit documentary evidence to show the amount of the charges, I find that the Landlord failed to establish the amount the Tenant is obligated to pay for this billing period. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for this billing period once he receives a copy of that bill from the City of Victoria.

I dismiss the Landlord's claims for compensation for the hydro charges, in the amount of \$55.06, for the period between July 17, 2010 and October 14, 2010. In addition to establishing that a tenant is obligated to pay hydro costs, a landlord must also accurately establish the cost of those charges. In these circumstances the Landlord has not submitted evidence to show the amount of hydro costs incurred between July 17, 2010 and October 14, 2010. As the Landlord has failed to submit documentary evidence to show the amount of the charges, I find that the Landlord failed to establish the amount the Tenant is obligated to pay. I dismiss this claim without leave to reapply, as I find that the Landlord is in possession of this bill and could have submitted it as evidence prior to this hearing.

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

I find that there is insufficient evidence to conclude that the furniture rental agreement between these parties formed a part of their tenancy agreement. In reaching this conclusion I was heavily influenced by the tenancy agreement which clearly indicates that there is a one page addendum attached to the agreement and that the addendum, which is clearly an addendum to the tenancy agreement, was submitted in evidence and. As there is no mention in the tenancy agreement of a second addendum, I cannot conclude that the furniture rental agreement forms a part of the tenancy agreement. As there is insufficient evidence to show that the furniture rental agreement is part of the tenancy agreement, I find that I do not have jurisdiction over that agreement. On this basis, I decline to consider the Landlord's application for \$20.00 for furniture rental.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,892.35, which is comprised of \$495.00 in unpaid rent, \$990.00 in loss of revenue for November and December of 2010, \$45.56 in utility charges, a \$25.00 late fee for the month of October of 2010, \$45.00 for cleaning the rental unit, \$241.79 for replacing the curtains, 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 security deposit of \$247.50, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,644.85. 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. A fact sheet pertaining to the enforcement of the monetary Order has been provided to both parties.

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: February 15, 2011.

Residential Tenancy Branch