



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On April 18, 2011 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

On April 28, 2011 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return 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 oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are how to dispose of the security deposit and whether either party is entitled 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 tenancy began on November 01, 2010; that the agreement was for a fixed term that was not to end prior to October 31, 2011; and that the Tenant vacated the rental unit on March 30, 2011 or March 31, 2011. The parties agree that they had a tenancy agreement that required the Tenant to pay monthly rent of \$2,000.00 and that the Tenant paid a security deposit of \$1,000. 00 on

October 25, 2010. A copy of the tenancy agreement and a two page addendum was submitted in evidence.

The Landlord and the Tenant agree that the Tenant provided the Landlord with his forwarding address, in writing, on March 30, 2011.

The Agent for the Landlord and the Tenant agree that they exchanged a series of emails regarding the return of the security deposit; that the Tenant indicated a willingness to agree to deducting \$550.00 from the security deposit providing the remainder of the deposit is returned to him; and that the parties never reached an agreement regarding this deduction. Copies of these emails were submitted in evidence.

The Landlord is claiming compensation, in the amount of \$1,000.00, for administrative costs associated to finding a new tenant. The Agent for the Landlord stated that his management company charges the Landlord a flat fee for placing a new tenant, which includes time spent screening perspective tenants, signing the rental agreement, and completing a condition inspection report. He stated that his management company charges this fee regardless of how much time the company actually spends placing a new tenant into the rental unit. He stated that he does not know when an invoice for this amount was sent to the Landlord nor does he know if this fee has been paid by the Landlord.

The Landlord and the Tenant agree that in these circumstances the Tenant advertised the rental unit, showed the rental unit, and presented the Landlord with the names of several perspective tenants.

The Landlord submitted no evidence to show that they were obligated to pay a \$1,000.00 administrative fee for this service; they submitted no evidence to show that they were billed for this service; and they submitted no evidence to show that they paid this amount to the management company.

The Landlord is claiming compensation, in the amount of \$33.60, for the cost of conducting credit checks on three perspective tenants. No documentary evidence was submitted to support this claim, however the Agent for the Landlord stated that the expense was incurred.

The Landlord is claiming compensation, in the amount of \$50.00, for a move-in fee charged to the Landlord by the strata corporation of this residential complex. No documentary evidence was submitted to support this claim, however the Agent for the Landlord stated that the expense was incurred.

In an email from the Tenant to the Agent for the Landlord, dated March 25, 2011, the Tenant advised that he had been advised by the president of the strata corporation that there was a move out fee of \$50.00.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a fixed term tenancy agreement with the Landlord that was to continue until at least October 31, 2011; that the Tenant paid a security deposit of \$1,000.00; that the Landlord did not return any portion of the security deposit; that the Tenant moved out of the rental unit on March 30, 2011 or March 31, 2011; that the Landlord received the Tenant's forwarding address on March 30, 2011; and that the Landlord did not file an Application for Dispute Resolution until April 18, 2011.

Although it is clear from emails the Tenant exchanged with the Agent for the Landlord that they were negotiating a deduction from the Tenant's security deposit, the parties did not reach a negotiated settlement. Although I accept that the Tenant offered to allow the Landlord to retain \$550.00 from his security deposit, I find that offer was contingent on the return of the remaining \$450.00. As the Landlord did not agree to return the remainder of the Tenant's security deposit, I find that the Landlord did not have the Tenant's written authorization to retain any portion of the deposit.

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 (if applicable) or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid any portion of the security deposit and the Landlord did not file an Application for Dispute Resolution until more than fifteen days after the tenancy ended and the Landlord received a forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid. I note that no interest is due on deposits paid in 2010.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant failed to comply with section 45(2) of the *Act* when he ended this tenancy on a date that was earlier than the date specified on the fixed term tenancy agreement. In addition to establishing that a tenant breached the *Act*, a landlord must also accurately establish

the loss the landlord incurred as a result of that breach, whenever compensation is being claimed.

In these circumstances, I find that the Landlord submitted insufficient evidence to establish that it paid a \$1,000.00 administration fee for placing a new tenant in the rental unit. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Agent for the Landlord's statement that his management company charged this fee. I note that a copy of the agreement between the management company and the Landlord was not submitted in evidence so I am unable to confirm that the Landlord was required to pay this fee regardless of the amount of time it takes to find a new tenant. I further note that an invoice for this fee was not submitted in evidence.

In determining that there was insufficient evidence to establish that the Landlord paid a \$1,000.00 administration fee for placing a new tenant in the rental unit I was further influenced by the fact that the Agent for the Landlord was unable to state when the Landlord was sent an invoice for this fee or if the Landlord has paid this fee. Given that the Agent for the Landlord does not have intimate knowledge of this charge, I placed less weight on his testimony in regards to this fee.

In determining that there was insufficient evidence to establish that the Landlord paid a \$1,000.00 administration fee for placing a new tenant in the rental unit I was further influenced by the fact that the parties agree that the Tenant advertised the rental unit; that the Tenant showed the rental unit; and that the Tenant provided names of perspective tenants to the Landlord. Given that the Tenant did most of the work involved in finding a new tenant, I find it difficult to accept that a fee of this amount was charged to the Landlord unless the Landlord had agreed, in advance, to pay this amount.

In determining that there was insufficient evidence to establish that the Landlord paid a \$1,000.00 administration fee for placing a new tenant in the rental unit I was further influenced by the fact that the addendum to the rental agreement specifies that the administrative costs of re-renting the rental unit would be \$4,000.00. This documentary evidence does not support the Agent for the Landlord's testimony that the Landlord had a contractual obligation to pay \$1,000.00 for placing a new tenant in the rental unit. In the event that the Landlord had a contractual obligation to pay a \$1,000.00 administration fee to find a new tenant, I would expect to see that amount in the addendum.

As the Landlord has failed to establish that the Landlord paid a \$1,000.00 administration fee for placing a new tenant in the rental unit, I dismiss the Landlord's claim for compensation in this amount.

I find that the Landlord submitted insufficient evidence to establish that it paid \$33.60 to conduct credit checks. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Agent for the Landlord's

statement that the Landlord incurred this expense. In circumstances where documentary evidence is, or should be, readily available, I find that the Landlord has an obligation to produce this evidence when claiming compensation. As the Landlord has failed to establish that it paid \$33.60 to conduct credit checks, I dismiss the Landlord's claim for compensation in this amount.

I find that the Landlord had an obligation to pay a move out fee of \$50.00 to the strata corporation when this tenancy ended. I based this decision on the testimony of the Agent for the Landlord, who stated that there was a \$50.00 move out fee, and the email, dated March 25, 2011, in which the Tenant indicated he had been informed of this fee by the president of the strata corporation.

Section 7(1)(f) stipulates that a landlord may charge a move-in or move-out fee charged to a landlord by a strata corporation. As the Landlord has the right to charge this fee, I find that the Tenant must pay the \$50.00 move-out fee.

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 filing the Landlord's Application for Dispute Resolution. I find that the Tenant did not need to file an Application for Dispute Resolution, as I would have come to the same conclusion on the basis of the Landlord's Application for Dispute Resolution, which had been filed prior to the Tenant's. I therefore find that the Tenant is not entitled to recover the filing fee from the Landlord for the cost of filing the Tenant's Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$2,000.00, which is double the security deposit that was paid. I find that the Landlord has established a monetary claim, in the amount of \$100.00, which is comprised of the \$50.00 move out fee and the cost of filing the Landlord's Application for Dispute Resolution.

After offsetting these two monetary awards I find that the Landlord owes the Tenant \$1,900.00. Based on these determinations I grant the Tenant a monetary Order for the amount of \$1,900.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: August 10, 2011.

Residential Tenancy Branch