



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, which was filed on January 17, 2013. The Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, at the service address noted on the Application, on January 18, 2013. The Landlord submitted Canada Post Documentation that corroborates this statement. The Agent for the Landlord stated that the service address was provided to the Landlord, in writing, on June 19, 2012. 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.

The Agent for the Landlord stated that the documents the Landlord wishes to rely upon as evidence were submitted to the Residential Tenancy Branch sometime in January of 2013, although that evidence was not available to me at the time of the hearing. The Agent for the Landlord was given the opportunity to testify about the documents and to resubmit the documents to the Residential Tenancy Branch. Those documents were resubmitted to the Residential Tenancy Branch on April 10, 2013.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/lost revenue; to compensation for late fees; to compensation for liquidated damages; to compensation for damage to the rental unit; and to retain all or part of the security deposit?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the Landlord and the Tenant entered into a fixed term tenancy agreement that began on February 01, 2012 and was to continue until January 31, 2013, at which time it was to continue as a periodic tenancy. The agreement declares that the Tenant is required to pay rent of \$785.00 by the first day of each month; that the Tenant is required to pay liquidated damages of \$300.00 if the Tenant ends the tenancy before the end of the fixed term of the tenancy; and that the Tenant paid a security deposit of \$392.50. This is consistent with the testimony provided by the Agent for the Landlord.

The Agent for the Landlord stated that a condition inspection report was completed at the beginning of this tenancy, a copy of which was submitted in evidence.

The Agent for the Landlord stated that on June 19, 2012 the Tenant provided the Landlord with written notice of his intent to end the tenancy on July 31, 2012; that he provided a forwarding address in this written notice; and that he vacated the rental unit sometime in July of 2012. She stated that on July 11, 2012 a Notice of Final Inspection was posted on the door of the rental unit, which informed the Tenant that the unit would be inspected on July 25, 2012. She stated that the Tenant did not attend the scheduled inspection and that a condition inspection report was completed on July 31, 2012, in the absence of the Tenant.

The Agent for the Landlord stated that the Landlord also holds a \$3.30 "laundry credit" and a \$7.50 "key deposit", which the Landlord would like to apply to any monetary award established by the Landlord.

The Landlord is seeking liquidated damages of \$300.00; \$785.00 in unpaid rent, and \$785.00 in lost revenue from August. The Agent for the Landlord stated that no rent was paid for July; that the Landlord is advertising continuously on several popular websites; that the rental unit was not re-rented until September 01, 2012; and that the liquidated damages is the estimated cost of re-renting the rental unit.

The Landlord is seeking compensation, in the amount of \$50.00, for NSF/late fees from July and August of 2012. The Agent for the Landlord stated that during this tenancy rent was paid by automatic withdrawal; that when the Landlord withdrew the rent for July the payment was declined; and that when the Landlord withdrew the rent for August the payment was declined. There is a term in the tenancy agreement that requires the Tenant to pay a fee of \$25.00 if the rent is not paid on time or if a cheque is returned due to NSF funds.

The Landlord is seeking compensation, in the amount of \$200.00, for disposing of property left in the rental unit. The Landlord submitted photographs that corroborate the Agent for the Landlord's testimony that a large amount of personal property had to be discarded at the end of the tenancy. The Agent for the Landlord stated that the disposal was completed by employees of the Landlord, at an estimated cost of \$200.00.

The Landlord is seeking compensation, in the amount of \$350.00, for cleaning the rental unit. The Landlord submitted photographs that corroborate the Agent for the Landlord's testimony that the rental unit required cleaning. The Agent for the Landlord stated that the cleaning was completed by employees of the Landlord, at an estimated cost of \$225.00 for general cleaning and \$125.00 for cleaning the carpet.

The Landlord is seeking compensation, in the amount of \$79.06, for cleaning the blinds, which the Agent for the Landlord stated required cleaning at the end of the tenancy. The Agent for the Landlord stated that the blinds were cleaned by a private company however no receipt for this expense was submitted.

The Landlord is seeking compensation, in the amount of \$150.00, for repairing the bathroom door. The Landlord stated that the bathroom door was missing at the end of the tenancy. The Agent for the Landlord stated that the door was replaced by employees of the Landlord, at an estimated cost of \$150.00.

The Landlord is seeking compensation, in the amount of \$200.00, for repairing a hole in the wall. The Landlord submitted a photograph of a large hole in the wall, which the Agent for the Landlord stated was not present at the start of the tenancy. The Agent for the Landlord stated that the repair was completed by employees of the Landlord, at an estimated cost of \$200.00.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$785.00 by the first day of each month. As he was required to pay rent on July 01, 2012, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$785.00 in outstanding rent to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant gave notice to end the tenancy on July 31, 2012. As there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay liquidated damages of \$300.00 if he ends the tenancy prematurely and he did end the tenancy prior to the end of the fixed term of the tenancy, I find that the Tenant is obligated to pay this amount. In determining this matter, I am satisfied that \$300.00 is a reasonable estimate of the costs of re-renting the unit.

On the basis of the undisputed evidence, I find that the Tenant did not comply with the *Act* or the tenancy agreement when he ended this tenancy prior to the end of the fixed term and that the premature end of the tenancy resulted in lost revenue for the Landlord for the month of August of 2012. I therefore find that the Landlord is entitled to compensation for loss of revenue, in the amount of \$785.00. In determining this matter, I am satisfied that the Landlord made a reasonable effort to re-rent the unit.

As the Tenant did not pay his rent when it was due on July 01, 2012 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it

is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of July of 2012.

As the tenancy had ended by August 01, 2012, I find that the Tenant was not required to pay rent on that date. As rent was not due for August, I find that the Landlord is not entitled to a late fee for that month. As rent was not due for August, I find that the Landlord should not have attempted to withdraw rent for that month. I therefore find that the Landlord is not entitled to a NSF fee associated to that payment.

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 testimony of the Agent for the Landlord and the photographs submitted in evidence, 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. I therefore find that the Landlord is entitled to compensation of \$200.00 for disposing of personal property and \$350.00 in cleaning costs.

On the basis of the testimony of the Agent for the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the blinds in clean condition at the end of the tenancy. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the blinds. In reaching this conclusion, I was strongly influenced by the absence of independent documentary evidence, such as a receipt, that corroborates the Landlord's statement that a private company was paid \$79.06 for cleaning the blinds. On this basis, I dismiss the Landlord's claim for compensation for cleaning the blinds.

On the basis of the testimony of the Agent for the Landlord, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to replace the bathroom door. I therefore find that the Landlord is entitled to compensation of \$150.00 for replacing the door.

On the basis of the testimony of the Agent for the Landlord and the photograph submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair this hole. I therefore find that the Landlord is entitled to compensation of \$200.00 for repairing the hole.

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 Landlord failed to comply with section 38(1), as the Landlord has not repaid the security deposit or the Landlord did not file the Application for Dispute Resolution until January 17, 2013, which is well after the tenancy ended and the date the landlord received the Tenant's forwarding address in writing.

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 find that the Landlords 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.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,845.00, which is comprised of \$1,570.00 in unpaid rent/lost revenue, \$300.00 in liquidated damages, a late fee of \$25.00, \$900.00 in damages, and \$50.00 in compensation for the filing this Application for Dispute Resolution. This claim must be reduced by double the amount of the security deposit, which is \$785.00, the \$3.30 "laundry credit", and the \$7.50 "key deposit".

Based on these determinations I grant the Landlord a monetary Order for the amount \$2,049.20. 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: April 11, 2013

Residential Tenancy Branch

