



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The Landlord seeks a monetary order for unpaid rent or utilities and liquidated damages, to keep all or part of the security deposit and recovery of the filing fee. The Tenant seeks a monetary order for money owed or compensation for damage or loss.

Both parties attended the hearing by conference call and gave testimony. The Landlord has acknowledged receiving the Tenant's documentary evidence package. The Tenant states that she has only received 1 of 2 of the Landlord's documentary evidence. The Landlord states that the missing evidence package was sent by Canada Post Registered Mail on July 9, 2013 and was confirmed received via online tracking on July 10, 2013. The Landlord has provided the Customer Receipt Tracking number as confirmation. I accept the evidence of the Landlord over that of the Tenant based upon the Canada Post Customer Receipt Tracking number that the Tenant has been properly served with the Landlord's complete documentary evidence. As such, I find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence. The contents of the Landlord's second evidence package were described in detail to the Tenant during the hearing.

During the hearing it was clarified with the Tenant that she has withdrawn her monetary claim as she is not seeking any compensation from the Landlord. The Tenant clarified that she had wanted to offset the Landlord's monetary claim. No further action is required for the Tenant's monetary claim.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on May 1, 2012 on a fixed term tenancy until April 30, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,100.00 payable on the 1st of each month. A security deposit of \$550.00 was paid.

Both parties agreed that the Tenant vacated the rental unit on December 31, 2012 and that a sublet tenant took over. The Tenant was re-renting the unit to the subtenant for \$100.00 less per month. The Tenant had pre-paid \$300.00 for the difference in rent for the last 3 months earning her a credit. Both parties also agreed that the sublet tenant vacated the rental unit at the end of January 2013 because of concerns over cockroaches.

The Landlord seeks a monetary claim for \$2,871.33. This consists of unpaid rent/loss of rental income for February of \$1,100.00, March of \$1,100.00 and a pro-rated amount of \$666.00 as the unit was re-rented on April 20, 2013. The Landlord also seeks compensation for liquidated damages of \$805.33 as per section 5 of the signed tenancy agreement.

The Tenant states that she should not be liable for the remaining rent as the subtenant had vacated due to issues with cockroaches. The Landlord states that all reasonable steps were taken to resolve the matter as soon as they were notified.

The Tenant also states that she should not be liable for the Landlord's monetary claim because she was not notified by the Landlord that the rental unit was not re-rented after the subtenant vacated. She states that had she been informed she could have attempted to mitigate any possible losses by advertising for another subtenant as she did previously. The Tenant also states that she was prepared to pay the liquidated damages and compensation to the Landlord in the amount of \$1,400.00 until she was informed that the Landlord was seeking a larger monetary claim. The Landlord states that the Tenant was notified through her and her father's email. The Tenant's father disputes this. The Landlord refers to the documentary evidence submitted by the Tenant of an email dated February 27, 2013 from the Landlord to the Tenant's father detailing the breach of contract and notification of the Landlord's claims.

Analysis

I prefer the evidence of the Landlord over that of the Tenant. The Landlord has provided sufficient evidence to satisfy me of their claim. There is no dispute that the Landlord suffered a loss of rental income for the 3 month period and that the unit was

re-rented on April 20, 2013. I find that the email provided by the Tenant supports the Landlord's claims that the Tenant or her Agent (father) was notified of the claim and that the unit was vacant. I find that the Landlord acted appropriately in responding to the issue of cockroaches based upon the evidence provided and that all reasonable steps were made. The Landlord is entitled to a monetary claim of \$3,671.33. I order that the Landlord retain the \$550.00 security deposit and the \$300.00 Tenant account credit in partial satisfaction of the claim. The Landlord is granted a monetary order for \$2,871.33. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$2,871.33.
The Landlord may retain the security deposit and the Tenant Account Credit.

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: July 23, 2013

Residential Tenancy Branch

