



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MND, MNR, MNSD

Introduction

This is an application for a Monetary Order for \$1561.87, and a request for recovery of the \$50.00 filing fee.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on August 14, 2013; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing.

All testimony was taken under affirmation.

Issue(s) to be Decided

Has the applicant established a monetary claim as requested?

Background and Evidence

The applicant testified that:

- On July 19, 2013 the tenant signed a six-month tenancy agreement with the monthly rent of \$900.00, and a security deposit of \$450.00 was collected on that same date.
- The move in inspection report was completed on July 29, 2013 and although the tenancy was not to begin until August 1, 2013, the tenant was given the keys on the date of the move in inspection.

- Later on that same date the tenant phone and inform me that the linoleum in the kitchen torn. It had not been torn when they did the move in inspection.
- Later on the same date July 29, 2013, the tenant informed me that she would not be moving into the rental unit, and began removing the items that she had already moved in.
- I inform the tenant that she would be required to give one-month notice and therefore on July 30, 2013 they received notice from the tenant that she would be vacating.
- They attempted to re-rent the unit for the month of August 2013, however were unable to do so and therefore have lost the full rental revenue for the month of August 2013.
- The tenant also refused to return the keys to the rental unit until the end of August 2013.
- There was also a \$250.00 clause in the tenancy agreement to cover the costs of re-renting the unit if the tenant breached the fixed term tenancy.
- As a result of the tear in the kitchen linoleum, the linoleum had to be replaced and they had originally estimated the cost at \$411.87; however the actual cost turned out to be \$394.96.

They are therefore requesting a reduced Monetary Order as follows:

August 2013 lost rental revenue	\$900.00
Liquidated damages	\$250.00
Linoleum repair	\$394.96
Filing fee	\$50.00
Total	\$1594.96

Analysis

It's my finding that the landlord has established the full reduced amount claimed.

The landlord has provided a copy of the fixed term tenancy agreement that shows that this tenancy was to begin on August 1, 2013 for a term of six months.

The tenancy agreement also clearly shows that the monthly rent was \$900.00 and a security deposit of \$450.00 was paid.

The tenant gave a Notice to End Tenancy that ended this tenancy at the end of August 2013, and therefore the tenant is liable for the full rent for the month of August 2013, especially since the tenant refused to return the keys until the end of August.

The tenancy agreement also has a clause requiring the tenant to pay a fee of \$250.00 if the tenant vacates before the end of the fixed term, and it's my finding that although this is called a fee on the tenancy agreement it is actually a liquidated damages clause and I therefore also allow that portion of the claim.

It's also my finding that the tenant is liable for the cost of replacing the torn linoleum in the kitchen as there is no indication that there was any tear in the linoleum at the time of the move in inspection.

I also allow the request for recovery of the filing fee.

Conclusion

I have allowed the landlords full reduced claim of \$1594.90 and I therefore Order that the landlord may retain the full security deposit of \$450.00, and I've issued a Monetary Order in the amount of \$1144.96.

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: November 20, 2013

Residential Tenancy Branch

