



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:

MND, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that that on October 23, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant. The landlord used the forwarding address given by the tenants when the tenants issued notice ending the tenancy. A Canada Post tracking number and tracking information for each tenant was provided as evidence of service. Both tenants failed to claim the registered mail and the mail was returned to the landlord. Copies of the returned envelopes were supplied as evidence.

A party may not avoid service by refusing to claim registered mail. Therefore, I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act; however neither tenant attended the hearing.

Preliminary Matters

The application was amended to reflect the details of dispute section, which indicated a claim for damage or loss under the Act, for late fees; not unpaid rent.

On January 15, 2013 the landlord sent each tenant a copy of a 2nd evidence package. The Canada Post tracking information showed that the tenants were issued a pick-up card on January 17, 2013. At the time of the hearing neither package has been claimed by the tenants.

Pursuant to section 71(2)(b) of the Act I find that the January 15, 2013 evidence submission has been sufficiently served effective January 20, 2013. The tenants had an opportunity to accept Notice of this hearing and to attend and make submissions in relation to evidence; they have chosen not to participate.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$50.00 for late rent payments?

Is the landlord entitled to compensation in the sum of \$396.27 for damage to the rental unit?

May the landlord retain the security deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 1, 2012, a security deposit in the sum of \$390.00 was paid. Rent was due on the 1st day of each month. A copy of the signed tenancy agreement was supplied as evidence.

A copy of the move-in and move-out condition inspection report was supplied as evidence.

The landlord has made the following claim:

Late June 2013 rent payment	\$50.00
Furniture removal	100.00
Wall repair	30.00
Special garbage disposal	65.00
Suite cleaning	120.00
Unpaid electrical bill	81.27
TOTAL	\$446.27

The landlord supplied a copy of a September 1, 2013 email from the tenants giving notice and providing the written forwarding address; the landlord accepted this late notice. The building manager arranged to complete a move-out inspection with the female tenant on September 30, 2013 at 1 p.m.

On September 30, 2013 the landlord went to the unit at 1 p.m. and the tenant was not prepared to complete the inspection report. She agreed to contact the landlord when she was ready. On October 2, 2013 the tenant left the keys in the manager's office and vacated without contacting the landlord, as she had had agreed. The inspection report was completed the next day in the absence of the tenants.

The landlord spoke to the tenant prior to the end of the tenancy and warned her to remove shelves she had installed and to repair the walls; the tenant said she would do this and remove all furniture. The shelves were not replaced and the landlord has claimed \$30.00 as a minimal cost of repair.

The tenant did not pay June 2013 rent on time and a \$50.00 late fee was imposed, as indicated in clause 5 of the tenancy agreement.

The tenant left furniture in the unit; the landlord has claimed \$100.00 for the cost of removal of those items.

The landlord claimed a \$65.00 dumping fee imposed by the City of New Westminster.

The caretaker completed 8 hours of suite cleaning; the condition inspection report indicated that numerous areas of the unit were not left in a reasonably clean condition.

The tenants did not pay their final hydro bill and the sum was going to be placed on the property owner's property tax bill. The owner paid the bill rather than having the amount owed placed on the property taxes.

The landlord supplied invoices for all items claimed; verifying the sums claimed.

The landlord submitted the claim within fifteen days of the end of the tenancy.

Analysis

Section 7 of the Residential Tenancy Regulation allows a landlord to charge not more than \$25.00 as late rent fee. Clause 5 of the tenancy agreement imposed a \$50.00 fee; which is contrary to the Regulation. Therefore, as the Act prohibits contracting out of the Act or Regulation, I find that clause 5 is not enforceable and that the claim for late fees is dismissed. I cannot alter the terms of the tenancy agreement that was signed by the parties.

I find, based on the evidence before me and, in the absence of the tenants who were each served with notice of this hearing, that the balance of the claim is accepted totaling \$396.27. The landlord scheduled an inspection report and the tenant indicated she would meet again with the landlord; but failed to do so. The condition inspection report was completed on October 3, 2013 and indicated the need for cleaning, furniture and some minor repairs. A tenant must leave a unit reasonably clean and undamaged, save normal wear and tear. From the evidence before I find that the tenants failed to do so.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$390.00, in partial satisfaction of the monetary claim.

I find that the landlord has established a monetary claim, in the amount of \$446.27, which is comprised of \$396.27 as compensation for damage to the rental unit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$390.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$56.27. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$396.27. The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord may retain the security deposit.

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: January 23, 2014

Residential Tenancy Branch

