



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Al Stober Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent and to keep all or part of the security deposit. It is readily apparent from information on the Application for Dispute Resolution that the Landlord is also seeking a monetary Order for damage to the rental unit, and the Application has been amended to include that claim.

The Agent for the Landlord stated that on February 12, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to a forwarding address provided by the Tenant, via registered mail. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Agent for the Landlord stated that on February 13, 2014 the Landlord submitted copies of the aforementioned evidence to the Residential Tenancy Branch. I was not in possession of that evidence at the time of the hearing. The Agent for the Landlord indicated that she is able to resubmit two receipts and a copy of the condition inspection report. As these documents are particularly relevant to my decision, the Landlord was given the opportunity to resubmit these documents.

The Landlord's evidence, which appears to have been faxed to the Residential Tenancy Branch in February of 2014, was located after the conclusion of this hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for cleaning the rental unit; and to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on July 01, 2013; that the Tenant agreed to pay rent of \$690.00 by the first day of each month; and that the Tenant paid a security deposit of \$345.00.

The Agent for the Landlord stated that on January 22, 2014 the Tenant gave written notice of his intent to vacate the rental unit on January 22, 2014. She stated that the Tenant did vacate the rental unit on January 22, 2014 and that the Tenant provided a forwarding address, in writing, on January 31, 2014.

The Agent for the Landlord stated that on, or about, January 23, 2014 the rental unit was advertised in the local paper and on a popular website. She stated that a new tenant was found for February 14, 2014. The Landlord is seeking compensation for loss of revenue for the period between February 01, 2014 and February 13, 2014.

The Agent for the Landlord stated that the Tenant and his interpreter inspected the rental unit with the building manager on January 31, 2014. She stated that the interpreter signed the condition inspection report, in which he authorized the Landlord to retain \$220.00 from the security deposit in compensating for cleaning the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was required to pay monthly rent of \$690.00 by the first day of each month; that on January 22, 2014 the Tenant provided notice of intent to vacate the rental unit on January 22, 2014; and that rental unit was vacated on January 22, 2014.

I find that the Tenant failed to comply with section 45 of the *Act* when the Tenant failed to provide the Landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on January 31, 2014 in accordance with section 45 of the *Act*, the Tenant would have had to provide written notice to the Landlord on, or before, December 31, 2013. As the Tenant did not give written notice to the Landlord until January 22, 2014, I find, pursuant to section 53 of the *Act*, that the earliest effective date of this notice was February 28, 2014.

I find that the Landlord made reasonable efforts to locate a new tenant for February and, in spite of those efforts, was unable to find a new tenant until February 14, 2014. In spite of the efforts to mitigate their loss, I find that the Landlord did suffer a loss of revenue for 13 days in February of 2014 that the Landlord would not have experienced if the Tenant remained in the rental unit until the effective date of the Notice to End Tenancy.

I therefore find that the Tenant must compensate the Landlord for thirteen days of lost revenue, at a daily rate of \$24.64, which equates to \$320.32.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain that amount to pay a liability or obligation for the tenant. On the basis of the undisputed evidence, I find that the Tenant and a person assisting the Tenant inspected the rental unit with a representative for the Landlord on January 31, 2014. As the person assisting the Tenant signed the report in the presence of the Tenant, I find it reasonable to conclude that he was acting on behalf of the Tenant when he signed the report.

As the person acting on behalf of the Tenant gave the Landlord permission to retain \$220.00 from the security deposit for cleaning the rental unit, I find that the Landlord had permission to retain this amount, pursuant to section 38(4) of the *Act*, leaving a security deposit balance of \$125.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$320.32, for lost revenue. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the remaining \$125.00 of the security deposit in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$195.32. 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: May 30, 2014

Residential Tenancy Branch

