



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on April 25, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were personally served to the tenant. Service occurred at 10 a.m., at the tenant's suite, with the agents spouse present as a witness.

On May 28, 2014 the landlord served the tenant a copy of the amended application. Service occurred via registered mail to the forwarding address provided by the tenant on the move-out condition inspection report.

These documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The tenant vacated the unit on April 30, 2014; an Order of possession is not required.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent and fees?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced in March 2013; rent was \$1,100.00 due by the 1st day of each month. A security deposit in the sum of \$550.00 was paid. The tenancy agreement

included a clause imposing a \$25.00 late and NSF fee. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on April 5, 2014 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of April 14, 2014, was issued. The tenant vacated after 5 p.m. on April 30, 2014. The tenant did not pay April 2014 rent in the sum of \$1,124.00. The tenant had been given a notice of rent increase, increasing rent by \$24.00.

The landlord has claimed unpaid April 2014 rent (\$1,124.00,); an April 2014 late rent payment fee (\$25.00,) and a NSF fee (\$25.00) for the April automatic withdrawal that failed. There was no evidence of a NSF fee paid by the landlord.

The condition inspection report was submitted as evidence. On April 30, 2014 the tenant signed agreeing to the following deductions from the security deposit:

- \$1,124.00 April 2014 rent;
- \$25.00 late fee;
- \$35.00 NSF fee;
- \$80.00 suite cleaning;
- \$112.00 carpet cleaning; and
- \$75.00 for over holding fees.

The landlord charged over hold for several hours the tenant remained in the unit beyond 1 p.m. on April 30, 2014.

The tenant signed the inspection report and provided a forwarding address on the report.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, pursuant to section 44 of the Act, that the tenancy ended affective April 30, 2014; the date the tenant vacated the unit.

The tenant has already agreed, in writing, to deductions from the deposit. From the evidence before me I find that the security deposit in the sum of \$550.00 has been applied to April 2014 rent owed and that the landlord is entitled to retain the deposit for that purpose.

I find that the landlord is entitled to the balance of April 2014 rent in the sum of \$574.00. The tenant remained in the rental unit and owes rent for the time she occupied the unit until April 30, 2014.

I find that the landlord is entitled to \$25.00 compensation for a late fee for April 2014 rent, in accordance with clause 10 of the tenancy agreement.

In the absence of evidence that the landlord paid a fee for the failed automatic withdrawal attempted for April 2014, I dismiss the claim for NSF fees.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$649.00. 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.

Conclusion

The landlord is entitled to a monetary Order.

The claim for NSF fees is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 16, 2014

Residential Tenancy Branch

