



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nystar Development Corporation Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNDC, MNSD, FF
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Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / the double return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from June 01, 2013 to May 31, 2014. Monthly rent of \$1,250.00 is due and payable in advance on the first day of each month, and a security deposit of \$625.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

By email dated February 19, 2014, the tenant gave notice to end tenancy effective March 31, 2014. The landlord testified that online advertising for new renters began almost immediately, and the landlord's agent testified that she showed the unit to prospective new renters as early as February 22, 2014. Ultimately, new renters were found effective from mid - April 2014.

While the parties did a walk through of the unit on March 31, 2014, and discussed the general condition of the unit, a move-out condition inspection report was not completed.

It is understood that the landlord had no particular concerns with the condition of the unit. By email dated March 31, 2014, the tenant provided her forwarding address.

The landlord filed an application for dispute resolution on April 08, 2014. The tenant filed an application for dispute resolution on July 10, 2014.

During the hearing the parties agreed to a partial resolution of the dispute(s).

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act addresses the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion led to a partial resolution, and the related details are set out below.

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their

tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the documentary evidence and testimony of the parties, the various aspects of the respective applications and my related findings are set out below.

LANDLORD

\$625.00: *loss of rental income for the first half of April 2014*

I find that notice given by the tenant to end the fixed term tenancy does not comply with the above statutory provisions. Further, I find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$600.00: *liquidated damages*

Clause # 5 of the written tenancy agreement provides for the assessment of “liquidated damages” in the event “the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act....” Pursuant to this provision, and the findings otherwise made in this Decision around the tenant’s ending of the fixed term tenancy “earlier than the date specified in the tenancy agreement as the end of the tenancy,” I find that the landlord has established entitlement to the full amount claimed.

\$302.85: *repairs to front door of unit*

The tenant does not dispute this aspect of the landlord’s application, and I find that the landlord has therefore established entitlement to the full amount claimed.

\$50.00: *filing fee*

As the landlord has achieved a significant measure of success with his application, and as the parties agreed to settle a minor aspect of their dispute, I find that the landlord has established entitlement to recovery of the full filing fee.

Amount of Gross Entitlement: \$1,577.85

Section 72 of the Act speaks to **Director's orders: fees and monetary orders**, in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all of the above, I order that the landlord retain the security deposit of **\$625.00**, resulting in the **amount of net entitlement** of **\$952.85** (\$1,577.85 - \$625.00).

TENANT

\$1,250.00: (2 x \$625.00) the double return of the security deposit

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security and / or pet damage deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security and / or pet damage deposit, and must pay the tenant double the amount of the security and / or pet damage deposit.

The tenant provided her forwarding address on March 31, 2014, and the landlord's application for dispute resolution was filed within 15 days of that date on April 08, 2014. In the result, this aspect of the tenant's application is hereby dismissed.

\$40.67: reimbursement for cost of light bulbs

During the hearing the parties agreed that the tenant has established entitlement limited to **\$30.00** of the amount originally claimed.

\$50.00: filing fee

As the parties agreed to settle a minor aspect of their dispute, I find that the tenant has established entitlement limited to recovery of **\$25.00**, or half the filing fee.

Total Entitlement: \$55.00

Offsetting the respective entitlements, I find that the landlord has established an overall net entitlement to **\$897.85** (\$952.85 - \$55.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$897.85**. Should it be necessary, this order may be served on the tenant, filed in the 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: July 30, 2014

Residential Tenancy Branch

