



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord confirmed their intent on seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, by writing "*Request Monetary of \$785.00 for: \$735.00 May 2014 Rent & \$50.00 NSF/LATE FEE*".

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for NSF/LATE FEE. Therefore, I amend their application to include a request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 26, 2014, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord's Agent, hereinafter referred to as Landlord, and the Tenant. The parties gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on June 11, 2006 and scheduled to switch to a month to month tenancy after June 30, 2007. Rent began at \$595.00 plus \$25.00 for parking and was subsequently increased to be \$725.00 plus \$10.00 for a storage locker rental. On April 28, 2014 the Tenant gave notice to end the tenancy effective May 31, 2014. The parties conducted a walk through inspection and completed condition inspection report forms at move in June 9, 2006 and move out May 16, 2014. The Tenant provided the Landlord with her forwarding address on May 16, 2014.

The Landlord testified that the Tenant's May 1, 2014 rent cheque was returned NSF so on May 6, 2014 they served the Tenant with a 10 Day Notice to end tenancy. The Tenant choice to vacate the unit in accordance with the 10 Day Notice and they regained possession of the rental unit on May 16, 2014 and the storage unit on May 22, 2014. The rental unit was re-rented as of June 1, 2014. The Landlord now seeks payment for the May 1, 2014 rent of \$735.00 plus \$50.00 for NSF and Late payment fees as provided for in section 10 of the tenancy agreement.

The Tenant disputed the Landlord's claim and argued that she had a verbal agreement with the resident manager for her to move out early so the Landlord could ready the unit for the new tenant. The Tenant argued that section 31 of the tenancy agreement stipulates that she must accommodate incoming tenants. She stated that she interpreted this clause to mean that because her unit required a lot of renovations before the new tenant could move in she was obligated to move out early and therefore would not be required to pay her last month's rent.

In closing the Tenant confirmed that she had possession of the unit until May 16, 2014 and the storage unit until May 22, 2014. She argued that her rent cheque was not NSF; rather, she had placed a stop payment on it.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

In this case the Tenant was required to pay rent on the first of each month. The Tenant remained in possession of the unit until May 16, 2014 and the Landlord did not re-rent the unit until June 1, 2014. I do not accept the Tenant's assertion that section 31 of the tenancy

agreement excludes her from having to pay her last month's rent. Accordingly, I find the Landlord has proven entitlement to unpaid rent, including loss of May rent, for the entire month of May 2014 in the amount of \$735.00.

Section 10 of the tenancy agreement provides for a late payment fee of \$25.00 plus any NSF charges, in accordance with section 7 of the Regulations.

I accept that the Landlord is entitled to claim the \$25.00 late payment fee; however, in absence of documentary evidence to prove the Landlord was charged a \$25.00 from their financial institution I find there to be insufficient evidence to prove that portion of their claim. Accordingly, I dismiss the claim for NSF fees and I award the Landlord the late payment fee of **\$25.00**.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid May 2014 Rent	\$ 735.00
Late payment fee for May 2014	25.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$810.00
LESS: Security Deposit \$297.50 + Interest \$9.88	<u>-307.38</u>
Offset amount due to the Landlord	<u>\$502.62</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$502.62**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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: October 03, 2014

Residential Tenancy Branch

