



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 3, 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 Tenants for this application.

The Landlord submitted evidence that each Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on June 3, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant was deemed served notice of this proceeding on June 8, 2014, five days after they were mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Tenants' absence.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on March 1, 2014 and was not scheduled to end until February 28, 2015. The Tenants were required to pay rent of \$1,750.00 on the first of each month and on January 20, 2014 the Tenants paid \$875.00 as the security deposit.

The Landlord testified that the Tenants provided notice to end tenancy on April 5, 2014 and then vacated the property on April 15, 2014, at which time a move out inspection report was completed. The Tenants provided their forwarding address during the move

out inspection. The Landlord stated that the Tenants signed the move out inspection agreeing to deduct cleaning charges of \$150.00 from their security deposit.

The Landlord submitted that he informed the Tenants that they would be required to pay May 2014 rent if the unit was not re-rented; however, when they put through the Tenants' preauthorized payment it was not honored by the bank. As a result the Landlord is seeking to recover NSF bank charges of \$40.00 as provided for in the tenancy addendum titled Price List, which all parties signed. In addition, the Landlord is seeking the loss of rent for May 2014 as the unit was not re-rented until June 1, 2014.

The Landlord indicated they were claiming parking fees of \$150.00 plus GST which pertain to a separate contract that was entered into by the same parties. A copy of the parking agreement was entered into evidence by the Landlord. The Landlord submitted that the parking is managed on a separate agreement because there are commercial spaces mixed in with the tenant spaces.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenants who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

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 45 of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the end of the fix term as provided in the tenancy agreement.

In this case I find the evidence supports that the Tenants breached section 45 of the Act by ending their tenancy effective April 30, 2014, which is 10 months prior to the end of the fixed term. The Landlord did what was reasonable to mitigate their loss by re-renting the unit as of June 1, 2014. That being said, the Landlord suffered a loss for May 2014 rent. Accordingly, I award the Landlord loss of May 2014 rent of **\$1,750.00**.

The evidence supports that the Tenants' May 1, 2014 preauthorized rent payment was returned or stopped by the bank. Despite the Tenants' ending their tenancy and

vacating the unit prior to April 30, 2014, I find that vacating the unit does not release them from their obligation to pay rent in accordance with the tenancy agreement.

Section 7 of the Regulation provides that a landlord may charge a non-refundable fee of not more than \$25.00 as a late payment charge or a returned cheque fee, providing the tenancy agreement provides for such a charge. A landlord may also seek to recover bank charges by providing evidence to support the actual amount charged by the bank.

Section 5 of the Act stipulates that landlords and tenants may not avoid or contract out of this Act or the Regulations.

Based on the above, I accept that the tenancy agreement provided for charges for NSF or late payment fees; however, as noted above, the amount for such fees cannot exceed \$25.00. The evidence supports that the Tenants failed to pay their May rent in accordance with the tenancy agreement and that their preauthorized payment was returned or refused. In absence of evidence to prove the exact amount charged to the Landlord by the bank, I grant the Landlord a late payment and/or returned payment fee of **\$25.00**.

In absence of evidence to the contrary, I accept the Landlord's submission that the Tenants signed the move out inspection report agreeing to pay \$150.00 for cleaning of the rental unit. Accordingly, I award the Landlord cleaning charges of **\$150.00**.

In regards to the claim for parking charges which pertain to a separate contract specifically governing parking, I find that such an agreement does not fall within the jurisdiction of the *Residential Tenancy Act*. This dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of the *Residential Tenancy Act* which governs tenancy agreements between a landlord and tenant. A separate commercial parking agreement, requiring payment of GST, does not constitute an agreement under the *Residential Tenancy Act*. Accordingly, I dismiss the Landlord's claim for parking of \$150.00 plus GST, for want of jurisdiction.

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 Tenants' security deposit plus interest as follows:

Loss of May 2014 Rent	\$1,750.00
Late payment or returned payment fee May 2014	25.00
Cleaning	150.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,975.00
LESS: Security Deposit \$875.00 + Interest 0.00	<u>-875.00</u>
Offset amount due to the Landlord	<u>\$1,100.00</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,100.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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

