



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MCBRIDE REALTY CENTER LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 8, 2014, to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and pet deposits; 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 who gave affirmed testimony. The Landlord testified that the Tenant was served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on July 12, 2014, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on July 17, 2014, in accordance with section 90 of the Act; and I proceeded in the Tenant's 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 December 1, 2013 and was scheduled to end on November 30, 2014. The Tenant was required to pay rent of \$800.00 on the first of each month. The Tenant paid \$375.00 as a pet deposit plus \$375.00 as a security deposit. The parties completed the move in inspection report on November 30, 2013 and the move out inspection report on May 17, 2014. The Tenant provided the Landlord with her forwarding address on May 17, 2014 during the move out inspection.

The Landlord testified that she was told by a neighbor that the Tenant was moving out. The Tenant vacated the property by May 17, 2014 during which the Landlord told the Tenant she would be responsible for rent until such time as the Landlord was able to re-rent the unit. The unit was not re-rented until June 25, 2014. As a result the Landlord is claiming the lost rent for June 2014 in the amount of \$640.00 (24 days x \$26.66 daily rate).

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 45 (2) 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 one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and 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.

In this case the tenancy agreement was a fixed term that was not scheduled to end until November 30, 2014. The Tenant vacated the unit on May 17, 2014, without notice and prior to the end of the fixed term which caused the Landlord to suffer a loss of rent. Accordingly, I find the Landlord has met the burden of proof to establish her claim and I award her loss of rent for June 2014 in the amount of **\$640.00**.

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

Section 44(1)(d) provides that a tenancy ends when the tenant vacates or abandons the rental unit. That being said, the tenant would still be financially responsible for a fixed term lease until such time as the unit is re-rented.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit and pet deposits in full, to the tenant with interest or make application for dispute resolution claiming against the security deposit and pet deposit.

Section 38(7) of the Act stipulates a pet damage deposit may be used **only for** damage caused by a pet to the residential property, unless the tenant agrees otherwise.

In this case the tenancy ended May 17, 2014, when the Tenant vacated the unit and is the same date that the Landlord was provided with the Tenant's forwarding address and there was no damages caused by the Tenant's pet. The Tenant refused to grant the Landlord permission to retain her security and/or pet deposit.

I find the Landlord was required to return the Tenant's pet deposit in full in the amount of \$375.00 no later than June 1, 2014. I further find the Landlord was required to either return the \$375.00 security deposit or make application for dispute resolution, no later than June 1, 2014. The Landlord did neither and delayed until July 08, 2014 before filing her application for dispute resolution.

Based on the above, I find that the Landlord has failed to comply with Sections 38(1) and 38(7) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) or 38(2) the landlord may not make a claim against the security and pet deposits and the landlord must pay the tenant double the security and pet deposits.

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 double the Tenant's security and pet deposit plus interest as follows:

Loss of June 2014 Rent	\$640.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$690.00
LESS: Pet Deposit $\$375.00 \times 2 + \text{interest } 0.00$	-750.00
LESS: Security Deposit $\$375.00 \times 2 + \text{Interest } 0.00$	<u>-750.00</u>
Offset amount due to the Tenant	<u>(\$810.00)</u>

The Landlord is hereby ordered to pay the Tenant the offset amount of \$810.00 forthwith.

Conclusion

The Landlord has been successful with their application and is ordered to pay the Tenant the offset amount of \$810.00 forthwith.

The Tenant has been issued a Monetary Order for **\$810.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord 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: November 28, 2014

Residential Tenancy Branch

