



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution and their evidence I find the Landlord 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*. Despite this clerical error I find the Tenant was properly informed of the Landlord's intent of seeking money owed or compensation for damage or loss under the act regulation or tenancy agreement, in addition to the other items selected on the application as the Landlord wrote the following in the Details of the Dispute:

We need to collect June 2014 Rent of \$400; Cleaning, Suite Damages, lost Keys, & Hauling Costs of \$397- and Liquidated Damages of \$675- TOTAL CLAIM \$1472.00

Based on the above, I amended the application to include a request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* and removed the request for *unpaid rent*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 17, 2014, to obtain a Monetary Order for: damage to the unit, site or property; 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 who gave affirmed testimony.

The Landlord provided documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on July 21, 2014. Canada Post tracking information confirms that the Tenant signed for the package on August 6, 2014.

Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding on August 6, 2014, in accordance with section 89 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 Tenant entered into a fixed term tenancy that began on December 1, 2013 and was set to end on November 30, 2014. Rent of \$1,375.00 was due on or before the first of each month and on October 31, 2013 the Tenant paid \$687.50 as the security deposit plus \$687.50 as the pet deposit. The Landlord testified that on May 31, 2014, the Tenant served them with a notice to end her tenancy early effective July 1, 2014. The Tenant vacated the rental unit as of July 14, 2014, leaving it with some debris that had to be discarded; requiring cleaning; with some damage; and without paying the full amount of June 2014 rent.

In support of their claim the Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; condition inspection report form; emails; photographs, and invoices for repairs and cleaning that were for higher amounts than the amounts claimed. The Landlord seeks \$1,472.00 compensation as follows:

\$400.00	Balance owed for June 2014 rent
\$397.00	Cleaning \$180.00, suite moulding repairs \$45.00; replacement keys and fobs \$85.00; Bulbs \$27.00 and \$60.00 debris removal
\$675.00	Liquidated damages as provided in section # 5 of the tenancy agreement.

The Landlord confirmed that they wished to retain the security and pet deposits in partial satisfaction of their claim.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenant 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 documentary evidence.

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 was a fixed term that was not scheduled to end until November 30, 2014; therefore, I find the Tenant breached section 45(2) of the Act by ending her tenancy early and vacating on July 14, 2014.

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.

The evidence supports that a \$400.00 portion of the Tenant's June 2014 rent was returned to the Landlord NSF, which is a breach of section 26 of the Act. Accordingly, I find the Landlord provided sufficient evidence to support their claim and I award them June 2014 rent in the amount of **\$400.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and return all of the keys.

Upon review of the evidence before me, I find the Tenant breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy. Accordingly I award the Landlord damages and cleaning costs as claimed in the amount of **\$397.00**.

Section 5 of the tenancy agreement provided for liquidated damages of \$675.00. A liquidated damages clause is a clause in a tenancy agreement where the parties agree, in advance, the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I accept the Landlord's testimony that this amount was agreed to by all parties at the time they signed the tenancy agreement and that this amount is reasonable. Accordingly, I award the Landlord liquidated damages in the amount of **\$675.00**.

The Landlord has been successful 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 and pet deposits plus interest as follows:

Unpaid June 2014 Rent	\$ 400.00
Damages & repairs	397.00
Liquidated Damages	675.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,522.00
LESS: Pet Deposit \$687.50 + Interest 0.00	-687.50
LESS: Security Deposit \$687.50 + Interest 0.00	<u>-687.50</u>
Offset amount due to the Landlord	<u>\$ 147.00</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$147.00**. 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: January 02, 2015

Residential Tenancy Branch

