



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harob Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The landlords attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that they served the tenant with their application for dispute resolution and notice of hearing by registered mail on August 18, 2014, to the dispute address. The landlord supplied testimony of the tracking number of the registered mail and said that the registered mail was unclaimed by the tenant.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlords were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that this tenancy began on August 1, 2009, the monthly rent at the end of the tenancy was \$1054, and the tenant paid a security deposit of \$475, at the beginning of the tenancy and which has been retained by the landlord.

The landlord's monetary claim is \$3008, comprised of August and September rent of \$1054 each, painting for \$450, and cleaning for \$450.

In support of their application, the landlord submitted that the tenant failed to vacate the rental unit, despite being served with an order of possession issued by the Residential Tenancy Branch ("RTB") to the landlord in a prior dispute resolution matter. The landlord submitted a copy of the order of possession, dated July 31, 2014, and stated that the order was served on the tenant in the first few days of August 2014. The order of possession was issued due to a supported 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") served upon the tenant.

The landlord submitted further that the tenant also failed to vacate the rental unit in September and as a result, the landlord was required to file the order in the Supreme Court of British Columbia, obtaining a writ of possession. Next, the landlord was required to hire a bailiff to evict the tenant, the eviction occurring on September 18, 2014.

As a result of the above, the landlord submitted that they did not receive any rent from the tenant for August and September 2014.

As to the claim for painting and cleaning, the landlord submitted further that these were estimated costs at the time of their application on August 18, 2014, when the tenancy had not yet ended.

The landlord's additional relevant documentary evidence included, but was not limited to, a written tenancy agreement, notices of rent increases, a monetary order for \$1054 for July 2014, unpaid rent, and written communication received from the tenant, referencing promises to pay the rent.

Analysis

As to the landlord's claim for unpaid rent for August and September 2014, the claimed loss is actually for loss of rent revenue, as the tenancy ended on the effective date of the Notice, which was not supplied into evidence. The landlord, however, was granted compensation for the rental unit for July 2014. The tenancy should have further effectively ended on by operation of the order of possession, dated July 31, 2014, which was served on the tenant in the first few days of August 2014.

Under section 57(3) of the Act, a landlord may claim compensation from a tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Despite being served the order of possession, I find the landlord submitted sufficient evidence to show that the tenant failed to vacate and overheld in the rental unit through September 18, 2014, when he was evicted by a bailiff hired by the landlord.

I therefore find as the tenant overheld in the rental unit for the entire month of August 2014, the landlord is entitled to a monetary award of \$1054, the amount of monthly rent.

As to the month of September, I find it reasonable to award the landlord the full month of loss of rent revenue of \$1054, as I find it unlikely that the landlord would be able to find a new tenant for the remaining 12 days of September after the tenant's forced eviction. The landlord is awarded \$1054.

As to the landlord's claim for painting and cleaning, I find the landlord submitted insufficient evidence to support that they have suffered a loss, as required under section 67 of the Act, or that the tenant left the rental unit in a state requiring cleaning or painting. I therefore dismiss the landlord's claim for painting and cleaning of \$450 each.

I award the landlord recovery of their filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$2158, comprised of the loss of rent revenue for August and September 2014 of \$1054 each, and \$50 for the filing fee paid for this application.

At the landlord's request, I direct them to retain the tenant's security deposit of \$475 in partial satisfaction of their monetary award of \$2158 and I grant the landlord a final,

legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1683, which is enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for monetary compensation is granted in part as they are granted a monetary award of \$2158.

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: February 27, 2015

Residential Tenancy Branch

