



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, and FF

Introduction

This hearing was convened in response to cross applications.

On August 12, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to retain the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The female Agent for the Landlord stated that on August 15, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to both Tenants, via registered mail. The Tenant stated that both packages were received by the Tenants and they were accepted as evidence for these proceedings.

On February 04, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that sometime in early February of 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 07, 2013; that the Tenant agreed to pay rent of \$735.00 by the first day of each month; and that the parties agreed that the Tenant would only be required to pay rent for November on a per diem basis.

The Landlord contends that the parties agreed to enter into a fixed term tenancy, the fixed term of which ended on May 31, 2014. The female Landlord stated that when the parties discussed the agreement there was an understanding that the tenancy would last for six months plus the last 23 days of November of 2013. The Tenant contends that the parties agreed to enter into a fixed term tenancy for a period of five months plus the last 23 days of November of 2013.

The Landlord submitted a copy of the tenancy agreement which clearly stipulates that the fixed term of the tenancy ends on May 31, 2014 and that the Tenant must move out of the unit at the end of the fixed term. Both Tenants have initialled the term that requires them to move at the end of the fixed term.

The male Tenant stated that this tenancy agreement was presented to them while they were in the middle of moving into the rental unit and they did not pay attention to the date of the end of the fixed term before they signed the agreement.

The Landlord and the Tenant agree that on February 18, 2014 the Tenant provided the Landlord with written notice of the Tenant's intent to end the tenancy on March 01, 2014. The parties agree that the Tenant paid rent for March and April of 2014, and that the keys to the unit were returned on April 02, 2014.

The female Agent for the Landlord stated that the Landlord continually advertises the residential complex on two popular websites and that the advertisements are updated on a daily basis. She stated that in spite of these attempts to advertise the landlord was unable to find a new tenant for the rental unit until July of 2014.

The Tenant stated that the Tenant also advertised the rental unit and that they received one response to their advertisements. He stated that he referred the potential tenant to the Landlord. The female Agent for the Landlord stated that this individual did not contact the Landlord in regards to the rental unit.

The Landlord is seeking a late fee of \$25.00 because rent was not paid when it was due on May 01, 2014. The tenancy agreement submitted in evidence declares that the Tenant is subject to a late fee of \$25.00 if rent is not paid when it is due.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$367.50 and that the Landlord received a forwarding address for the Tenant, in writing, on April 02, 2014. The parties agree that on April 02, 2014 the Tenant agreed, in writing, that the Landlord could retain \$233.00 of the Tenant's security deposit for cleaning.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$735.00 on the first day of each month. I find that this was a fixed term tenancy and that the Tenant was obligated to vacate the rental unit at the end of the fixed term, which was May 31, 2014.

I find that there is insufficient evidence to establish that the Landlord and the Tenant agreed that the fixed term of this tenancy would end on April 30, 2014. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the parties verbally agreed that the tenancy would end on April 30, 2014 or that refutes the female Agent for the Landlord's testimony that they did not have a verbal agreement that the tenancy would end on April 30, 2014.

As there is no evidence to corroborate the Tenant's submission regarding a verbal agreement, I find that I must rely on the written agreement submitted in evidence, which declares the fixed term ended on May 31, 2014.

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

I find that the Tenant must pay \$735.00 to the Landlord for the loss of revenue that the Landlord experienced in May of 2014, as the Landlord would have collected that amount if the tenancy continued until the end of the fixed term.

On the basis of the female Agent for the Landlord's testimony and in the absence of evidence to the contrary, I find that the Landlord made reasonable efforts to re-rent the unit.

As the Tenant did not pay rent when it was due on May 01, 2014 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of May.

Section 48(4) of the *Act* authorizes a landlord to keep an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. On the basis of the undisputed evidence, I find that on April 02, the Tenant gave the Landlord written permission to retain \$233.00 from the Tenant's security deposit.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in

writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. As the Landlord was only entitled to retain \$233.00 of the Tenant's security deposit, I find that the Landlord was obligated to deal with the remaining portion of the security deposit, which was \$134.50, in accordance with section 38(1) of the *Act*.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the remaining security deposit of \$134.50 and the Landlord did not file an Application for Dispute Resolution until more than fifteen days after the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit. As a security deposit of \$134.50 remained at the end of the tenancy, I find that the Landlord must pay double this amount to the Tenant, which is \$269.00.

I find that both the Landlord's and the Tenant's Application for Dispute Resolution have merit, I find that they are each responsible for the cost of filing an Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$269.00, which represents double the security deposit remaining at the end of the tenancy.

The Landlord has established a monetary claim of \$760.00 in compensation for lost revenue from May of 2014 and a late fee of \$25.00.

After offsetting the two claims, I find that the Tenant owes the Landlord \$491.00 and I grant the Landlord a monetary Order in that amount. In the event the Tenant does not voluntarily comply with this Order, it may be served to the Tenant, 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: March 04, 2015

