



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 18, 2014, to obtain a Monetary Order for: damage to the unit, site or property; 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 Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. The Landlord provided testimony that the Tenant was served notice of this application, notice of the hearing, and their evidence, by registered mail on August 19, 2014. Canada Post tracking information was provided in the Landlord's testimony.

Based on the Landlord's submissions I find the Tenant was deemed served notice of this proceeding as of August 24, 2014, five days after they were mailed, pursuant to section 90 of the Act. Therefore, I proceeded in absence of the Tenant.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to obtain a Monetary Order?
2. If so, has the Landlord proven entitlement to retain the Tenant's security deposit?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy that began on July 1, 2013. Rent of \$1,150.00, which included parking charges, was due on or before the first of each month. On June 24, 2013 the Tenant paid \$562.50 as the security deposit.

The Landlord stated that the Tenant attended the move in inspection on July 1, 2013 and the move out inspection on April 2, 2014, signing the condition inspection report as per the copy provided in their evidence. He argued that the Tenant signed the form agreeing to have the \$10.00 March unpaid rent and the \$215.00 cleaning charges deducted from her \$562.50 security deposit, leaving a balance held in trust by the Landlord of \$347.50. The Landlord confirmed that it appeared that the Tenant had written their forwarding address on the bottom of the move out condition inspection report form on April 2, 2014.

The Landlord testified that on March 17, 2014, they received the Tenant's late notice to end their tenancy effective April 1, 2014. The Landlord submitted evidence that the Tenant was told he would be responsible for April 2014 rent if the Landlord was not able to find a new tenant for April. The Landlord submitted that they were not able to find a new Tenant so they are seeking loss of rent for April in the amount of \$1,150.00.

The Landlord submitted a copy of an email into evidence dated April 7, 2014, which states:

Previous tenant [tenant's name and address] – phoned today to confirm his forwarding address and requested he pick up the damage deposit cheque when ready...

Analysis

Given 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 evidence.

Based on the foregoing, I accept that the Tenant agreed in writing, to allow the Landlord to retain \$225.00 of his security deposit, which consisted of \$10.00 owed for March 2014 rent plus \$215.00 for cleaning costs. Accordingly, I grant this portion of the Landlord's application in the amount of **\$225.00**.

Section 45 (1) of the Act stipulates that a tenant may end a periodic 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, 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.

I accept the evidence that the Tenant provided late notice to end his tenancy, in breach of section 45 of the Act. I further accept that that breach caused the Landlord to suffer a loss of rent for the month of April 2014. Accordingly, I grant the Landlord compensation for loss of rent in the amount of **\$1,150.00**.

The Landlord has 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 Tenant's security deposit plus interest as follows:

The evidence before me was that the tenancy ended April 1, 2014 and the Landlord was provided the Tenant's forwarding address in writing on the move out condition inspection form on April 2, 2014.

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, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case, after the mutual agreement, the Landlord continued to hold in trust \$347.50 as the security deposit. The Landlord was required to return the security deposit or file for dispute resolution no later than April 17, 2014, pursuant to section 38(1) of the Act, as listed above. The Landlord did not return the security deposit amount and did not file their application to retain the security deposit until August 18, 2014, which was outside of the specified timeframes.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) 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) the landlord must pay the tenant double the security deposit. Double the security deposit currently held by the Landlord is calculated as **\$695.00** (2 x \$347.50 + \$0.00 Interest).

Based on the above, I find the Landlord is entitled to a monetary order as follows:

Unpaid March 2014 Rent & cleaning	\$ 225.00
Loss of April 2014 Rent	1,150.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,425.00
LESS: Double Security Deposit \$695.00	<u>-695.00</u>
Offset amount due to the Landlord	<u>\$ 730.00</u>

Conclusion

The Landlord has been awarded a Monetary Order for **\$730.00**. 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 landlord

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 06, 2015

Residential Tenancy Branch

