



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EY PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 07, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this testimony.

The Agent for the Landlord stated that the service address was provided by the Tenant as a forwarding address on December 22, 2014.

In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing. The documents submitted were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent, for damage to the rental unit, for an NSF fee, and/or liquidated damages?

Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated:

- that this tenancy began on May 01, 2014;

- that the Landlord and the Tenant had a fixed term tenancy agreement, the fixed term of which ended on April 30, 2015;
- that rent of \$850.00 was due by the first day of each month;
- that the Tenant paid a security deposit of \$425.00 and a key deposit of \$50.00;
- that the tenancy ended on December 17, 2014 as a result of the Landlord serving a Ten Day Notice to End Tenancy for Unpaid Rent; and
- that the keys to the unit were returned on December 22, 2014.

The Landlord is seeking compensation for liquidated damages, in the amount of \$400.00. The tenancy agreement, which was submitted in evidence, requires the Tenant to pay liquidated damages of \$400.00 if the Tenant ends the tenancy prior to the end of the fixed term of the tenancy or the Tenant breaches a material term of the tenancy agreement that causes the Landlord to end the tenancy prior to the end of the fixed term.

The Landlord is seeking compensation for unpaid rent, in the amount of \$1,700.00. The Landlord stated that no rent has been paid for November or December of 2014.

The Landlord is seeking compensation for an NSF fee, in the amount of \$25.00. The Agent for the Landlord stated that a rent cheque tendered for rent for November of 2014 was returned by the Tenant's financial institution due to insufficient funds. The tenancy agreement stipulates that a fee of \$25.00 is charged when a cheque is returned by the Tenant's financial institution due to insufficient funds.

The Landlord is seeking compensation, in the amount of \$150.00, for cleaning the rental unit. The Landlord submitted photographs that show cleaning was required at the end of the tenancy.

The Landlord submitted an invoice from a maintenance company that appears to be closely affiliated to the Landlord, given that it has the same business address and a similar name. The Agent for the Landlord stated that this company is a "separate division" of the company. The invoice indicates that company employees spent 8 hours cleaning the rental unit, for which they are only seeking compensation for 6 hours of cleaning.

The Landlord is seeking compensation, in the amount of \$150.00, to repair a freezer door. The Landlord submitted a photograph that show dents in the door. The Agent for the Landlord stated that there were four dents in the door, which was new at the start of the tenancy.

The invoice from the maintenance company that is affiliated to the Landlord includes a charge of \$150.00 for repairing the door. The Agent for the Landlord stated that this charge includes compensation for time a company employee spent removing the damaged freezer door, delivering it to the company that repaired it, and replacing the

door, which she estimates took 1.5 hours. She did not know how much the Landlord paid to repair the dents in the door.

The Landlord is seeking compensation, in the amount of \$35.00, to replace the mail box lock. The Agent for the Landlord stated that the keys for the mail box were not returned.

The invoice from the maintenance company that is affiliated to the Landlord includes a charge of \$35.00 for replacing the lock. The Agent for the Landlord stated that this charge includes \$20.00 for the lock and the remainder of the claim was for time a company employee spent replacing the lock, which she estimates took 15 minutes.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the parties entered into a written tenancy agreement, for a fixed term that began on May 01, 2014 and ends on April 30, 2015.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a Ten Day Notice to End Tenancy as a result of the Tenant failing to pay rent when it was due, which is a material term of the tenancy. I find this tenancy ended on December 17, 2014 as a result of that Notice to End Tenancy.

On the basis of the undisputed evidence, I find that the Tenant has not paid the \$850.00 in rent that was due on November 01, 2014 or the \$850.00 in rent that was due on December 01, 2014. As section 26 of the *Residential Tenancy Act (Act)* requires Tenants to pay rent when it is due, I find that the Tenant must pay \$1,700.00 to the Landlord.

As the a rent cheque for November of 2014 was returned due to insufficient funds and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever this occurs, I find that the Landlord is entitled to a late fee of \$25.00 for NSF fees for that month.

On the basis of the undisputed evidence, I find that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$400.00 to the Landlord if the Tenant causes the tenancy to end prior to the end of the fixed term of the tenancy. 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 of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$400.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which has not been established, or even suggested, in these circumstances.

As the tenancy ended as a result of the Tenant's failure to pay rent when it was due, I find that the Landlord is entitled to collect liquidated damages of \$400.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably cleaning condition. I therefore find that the Landlord is entitled to compensation for the cost of remedying that breach, in the amount of \$150.00, which I find to be reasonable compensation for six hours of cleaning.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the damaged freezer door and return the mail box key. In addition to establishing that the Tenant damaged the freezer door and failed to return the key, the Landlord must also accurately establish the cost of remedying the breach. In these circumstances, I find that the Landlord has established that an employee spent approximately 1.5 hours replacing the door and 15 minutes replacing the lock in the mail box. I find that the Landlord is entitled to \$50.00 in compensation for that time.

I find, however, that the Landlord has failed to establish how much it paid a third party to repair the freezer door and how much it paid for the lock. I find that receipts for such expenses should be submitted to support claims whenever receipts can be provided with reasonable effort. In my view, the party paying for the repair has the right to see the true costs of a repair and should not be required to rely on the applicant's assessment of the costs. I therefore dismiss the remainder of the Landlord's \$150.00 claim for repairing the freezer door and the remainder of the Landlord's claim for replacing the lock.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,375.00, which is comprised of \$1,700.00 in unpaid rent, \$25.00 for a NSF fee, \$400.00 in liquidated damages, \$200.00 for damage/cleaning, and \$50.00 in compensation for the filing fee

paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security and key deposit of \$475.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,900.00. In the event that the Tenant does not comply with this Order, it may be served on 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: April 21, 2015

Residential Tenancy Branch

