



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding D-Con Equities Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF
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Introduction

This hearing was scheduled in response to 2 applications:

- i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and
- ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / a monetary order for compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

This appears to be the third hearing in disputes between these parties with respect to the same tenancy. Pursuant to a written tenancy agreement, the original fixed term of tenancy was from May 01, 2012 to April 30, 2013. Monthly rent of \$1,200.00 was due and payable in advance on the first day of each month. A security deposit of \$600.00 was collected on April 27, 2012. It is not clear whether a move-in condition inspection report was completed but, in any event, a copy of such a report is not before me in evidence.

The original written tenancy agreement was amended by the parties to reflect entry into a second fixed term of tenancy from May 01, 2013 to April 30, 2014. Monthly rent of \$1,230.00 was due and payable in advance on the first day of each month. The \$600.00 security deposit collected at the start of the original fixed term of tenancy was carried forward and continued to be held in trust by the landlord. The written agreement(s) provide that at the end of the fixed term, "the tenancy is ended and the tenant must move," and by way of their initials on the tenancy document, the parties specifically acknowledged their agreement to this provision.

By email dated March 13, 2014 the landlord informed the tenant that the tenancy ending April 30, 2014 would not be renewed with him, and that advertising for a new tenant would commence April 01, 2014. Subsequently, the tenant vacated the unit "on March 31 / April 1, 2014" and informed the landlord after the fact by email dated April 03, 2014.

As rent was unpaid when due on April 01, 2014, when the landlord returned to the city he issued a 10 day notice to end tenancy for unpaid rent dated April 05, 2014. Thereafter, the tenant made no further payments toward rent, and he acknowledged during the hearing that he did not return any of the unit keys to the landlord. A move-out condition inspection report was not completed, and there is no evidence that a forwarding address was provided by the tenant.

The landlord testified that as a result of online advertising, new renters were found for the unit effective from May 01, 2014.

The tenant's application for dispute resolution was filed on May 20, 2015. The landlord's application was filed on May 26, 2015.

Analysis

Based on the documentary evidence and testimony, the various aspects of the respective applications and my related findings are set out below.

LANDLORD

\$1,230.00: *unpaid rent / loss of rental income for April 2014*

Section 45 of the Act addresses **Tenant's notice**, in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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 find that the tenant's decision to end the fixed term tenancy on March 31, 2014, which is a date that falls "earlier than the date specified in the tenancy agreement as the end of tenancy," (April 30, 2014) does not comply with the above statutory provisions.

Section 7 of the Act addresses **Liability for not complying with this Act:**

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the landlord attempted to mitigate the loss of rental income for April 2014 by undertaking in a timely fashion to advertise for new renters.

Following from all of the above, I find that the landlord has established entitlement to the full amount claimed.

\$113.30: (\$99.29 + \$14.01) cost claimed for changing unit locks & mailbox lock

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that as the tenant did not return the unit key(s) or the mailbox key(s) to the landlord after vacating the unit on March 31, 2014, the landlord incurred costs to change the respective locks. I find that the tenant's failure to comply with the above statutory provision leads to the landlord's entitlement to related costs. Having reviewed the receipts submitted in evidence, I find that the landlord has established a total claim of **\$97.95**, as follows:

\$74.94: (3 x \$24.98) 3 deadbolt locks

\$03.75: (GST)

\$05.25: (PST)

\$14.01: (includes GST & PST) mailbox lock

\$50.00: filing fee

As the landlord has generally succeeded with the principal aspect(s) of his application, I find that he has also established entitlement to recovery of the full filing fee.

Total entitlement: \$1,377.95 (\$1,230.00 + \$97.95 + \$50.00)

Liquidated Damages

Towards the end of the hearing the landlord referred to a copy of the written tenancy agreement in evidence, and drew specific attention to the liquidated damages clause. In summary, the clause provides that the tenant may be assessed \$590.00 "as liquidated damages" in the event that the tenant "ends the fixed term tenancy before the end of the original term...." However, a claim to recover liquidated damages is not identified either in the landlord's application, or on the monetary order worksheet included with the landlord's application. Further, the landlord made no request during the hearing to amend the application to include a claim for liquidated damages. Pertinent to the above, the attention of the parties is drawn to the following Residential Tenancy Branch "Rules of Procedure:"

2.2 Identifying issues on the application for dispute resolution

The claim is limited to what is stated in the application.

2.9 No divided claims

An applicant may not divide a claim.

Pursuant to the above, I find that the issue of liquidated damages is not before me.

TENANT

\$1,200.00: *(2 x \$600.00) the double return of security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides 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 / pet damage deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit / pet damage deposit, and must pay the tenant double the security deposit / pet damage deposit.

In the circumstances of this dispute, the issue of the tenant's forwarding address was addressed in an Arbitrator's decision dated April 23, 2015, in part as follows:

The tenant confirmed that the address on the application is his present address. It was explained to [the landlord] that it's now deemed that he has been served with the tenant's forwarding address as of this date and that he has fifteen days to either return the security deposit or file for dispute resolution as per Section 38 of the Act. The landlord indicated that he understood.

Subsequent to April 23, 2015, the landlord has not repaid the tenant's security deposit, and the landlord's application for dispute resolution in which he seeks to retain the tenant's security deposit was filed on May 26, 2015. Accordingly, I find that the landlord neither repaid the security deposit nor filed an application to retain it within 15 days after the decision dated April 23, 2015. In the result, I find that the tenant has established entitlement to the double return of the security deposit as claimed.

\$40.00: *reimbursement of payment for storage beneath unit front porch (May 23, 2013)*

Tenant access to this particular storage space was addressed in the decision dated July 15, 2013. In summary, the Arbitrator found that while there was evidence that provision of a storage locker was included in the rent, there was insufficient evidence that the tenant's access to storage beneath the front porch of the unit was also included in the rent. Accordingly, when the landlord gave access to the storage area beneath the front porch in exchange for a \$40.00 monthly fee, the tenant claimed there was a diminished value in his tenancy, and he sought a reduction in rent for the same amount. In relation to this claim, by way of the decision dated July 15, 2013 the Arbitrator found, in part:

....I dismiss the tenant's application for a reduction in rent for the loss in value of his tenancy without leave to reapply.

As I reject the tenant's attempt to enforce his right to access services and facilities that were not provided to him in the original written residential tenancy agreement and in accordance with the powers delegated to me under the Act, I order the tenant to remove his belongings from the storage area under the porch of this rental home.

During the current hearing, the tenant testified that payment of \$40.00 was limited to the month of May 2013, and that pursuant to the Arbitrator's order of July 15, 2013, his possessions were later removed from beneath the front porch.

Black's Law Dictionary defines *res judicata*, in part:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Following from all of the above, as the matter of the tenant's entitlement to directly or indirectly claim the \$40.00 storage fee has already been decided, I decline jurisdiction to rehear that aspect of the tenant's application.

\$50.00: *filing fee (for previous application)*

This aspect of the application is hereby dismissed, as the filing fee sought concerns an entirely different proceeding from the current proceeding.

\$50.00: *filing fee (for current application)*

As the tenant has achieved some success with the principal aspect(s) of his application, I find that he has also established entitlement to recovery of the full filing fee.

Total entitlement: \$1,250.00 (\$1,200.00 + \$50.00)

Offsetting the respective entitlements, I find that the landlord has established a net claim of **\$127.95** (\$1,377.95 - \$1,250.00), and I hereby issue a **monetary order** in favour of the landlord to that effect.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$127.95**. Should it be necessary, this order may be served on the tenant, filed in the 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: October 28, 2015

Residential Tenancy Branch

