



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee.

An agent for the tenant (the "agent"), the owner of the named tenant company (the "owner"), and the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

At the outset of the hearing, the agent and owner claimed they had not received a package from the landlord. The landlord submitted a BC Company Summary document from the BC Registry Services in evidence which indicates the mailing address of the named tenant company. The agent and owner denied that the mailing address of the tenant company was accurate. The agent and owner could not explain why the address was not accurate when the owner is responsible for updating the mailing address of the business on a yearly basis. Furthermore, neither the agent nor the owner provided any explanation on how they knew to call into the hearing without having received any documentation regarding the hearing including the numbers to call into the hearing.

Based on the above, I do not find the agent or owner to be credible, and consider their explanation to be unreasonable and inconsistent with the documentary evidence before me which indicated that the registered mail package was mailed on June 29, 2015 and was signed for and accepted on July 2, 2015. In addition, the online registered mail tracking website supports that the registered mail package was successfully delivered.

Given the above, I prefer the landlord's testimony which is supported by documentary evidence that the tenant company was sufficiently served in accordance with the *Act* with the Notice of Hearing, Application and documentary evidence as of July 2, 2015.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy began on June 1, 2014 and was scheduled to end on May 31, 2015. Monthly rent in the amount \$1,650 was due on the first day of each month. A security deposit in the amount of \$825 was paid by the tenant at the start of the tenancy.

The agent and owner did not dispute that the rent cheques for April and May of 2015 were returned to the landlord as "dishonoured". The landlord is seeking the unpaid rent for the months of April and May of 2015 at \$1,650 for each month for a total of \$3,300 in unpaid rent.

The agent and owner did not submit any documentary evidence to prove that rent for April and May had been subsequently paid. In addition, the agent and owner did not submit any documentary evidence to support that the parties had agreed in writing to end the fixed term tenancy early. The landlord denied that he ever agreed to end the fixed term tenancy early.

Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Monetary claim of landlord – There is no dispute that the rent cheques for April and May 2015 were unable to be cashed by the landlord. Section 26 of the *Act* states that a tenant must pay rent on the day that it is due in accordance with the tenancy agreement. Therefore, I find the tenant breached section 26 of the *Act*. As a result, I accept that the landlord is entitled to the unpaid rent of \$1,650 for April 2015, and \$1,650 for May 2015.

As the landlord's application was successful, I grant the landlord the recovery of the cost of the **\$50** filing fee.

Monetary Order – I find that the landlord has established a monetary claim of **\$3,350** comprised of \$3,300 in unpaid rent as claimed, plus the recovery of the \$50 filing fee. This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlord continues to hold in the amount of \$825, which has accrued no interest to date. **I authorize** the landlord to retain the tenant's full security deposit of \$825 in partial satisfaction of the landlord's monetary claim, and **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$2,525**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$3,350 as indicated above. The landlord has been authorized to retain the tenant's full security deposit of \$825 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 of the *Act* for the balance due by the tenant to the landlord in the amount of \$2,525. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 4, 2015

Residential Tenancy Branch

