



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on September 11, 2015 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on September 23, 2015 for:

1. A Monetary Order for unpaid rent – Section 67;
2. A Monetary Order for damages – Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent, late fees and cleaning costs?

Is the Tenant entitled to return of rent and the security deposit?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on August 1, 2013. The Landlord states that the Tenant moved out of the unit and returned the keys on either September 1 or 2, 2015. The Tenant states that the Tenant moved out and returned the keys on September 1, 2015.

Rent of \$1,150.00 was initially payable on the first day of each month. At the outset of the tenancy the Landlord collected \$575.00 as a security deposit. The Landlord raised the rent to \$1,175.00 as of August 1, 2014. On April 20, 2015 the Landlord gave the Tenant a notice of rent increase to \$1,204.00 effective August 1, 2015. The Parties mutually conducted a move-out and move-out inspection and completed condition reports. The Tenant provided its forwarding address on the move out report dated September 9, 2015.

The Landlord states that the Tenant paid the rent in advance to and including September 2015 rent but failed to include the increased rental amount for August and September 2015. The Landlord claims unpaid rent of \$58.00. The Tenant does not dispute the rental increase but states that the latest rent increase was not given to him until after he paid the rent in advance. The Tenant argues that as the Landlord accepted the rents in advance no more rent is payable.

The Landlord states that an addendum to the tenancy agreement provides for late rent fees of \$25.00. The Landlord states that the Tenant paid the rent late in August and December 2014 and claims \$50.00. The Landlord did not provide a copy of the tenancy agreement. The Tenant states that there is no provision for a late rent fee in the tenancy agreement.

The Landlord withdraws the claim for cleaning costs.

The Tenant states that the Landlord was given written notice of ending the tenancy for September 1, 2015 and that this notice was sent from out of country on July 25, 2015 by special delivery. The Tenant described the delivery company. The Tenant claims reimbursement of September 2015 rent and return of the security deposit. The Landlord states that while the Tenant did tell the Landlord this information the Tenant has no evidence to substantiate that the notice was sent as claimed and the Landlord did not receive any notice. The Landlord states that the unit was advertised online but does not know when and that the unit is still vacant.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Regardless of the prepayment of rents, based on the undisputed evidence of a rental increase, I find that the Tenant was required to pay the increased rent when it came into effect. As the Tenant did not pay the increased amount when it was due I find that the Landlord has substantiated an entitlement of **\$58.00**. Given the lack of any tenancy agreement provision for the late fee I find that the Landlord has not substantiated its claim for late fees and I dismiss this claim. As the

Landlord's application has met with minimal success I decline to award recovery of the filing fee. Deducting \$58.00 from the security deposit plus zero interest of **\$575.00** leaves **\$517.00** remaining in the security deposit to be returned to the Tenant.

Rent is only payable during an ongoing tenancy. I accept the Tenant's more precise evidence of when they moved out of the unit and find that the tenancy ended on or before September 1, 2015. As such no further rent was payable. While the Landlord may have had a right to claim lost rental income for this month, given the lack of evidence in relation to its advertisement and considering that the unit is still empty I find that the Landlord has not substantiated that the Tenant caused the Landlord to lose any rental income for September 2015. I find that the Tenant is therefore entitled to return of the rent paid for September 2015 of **\$1,204.00**. As the Tenant's application has met with substantial success I find that the Tenant is entitled to recovery of the **\$50.00** filing fee and together with the outstanding security deposit of \$517.00, the Landlord owes the Tenant a total of **\$1,771.00**.

Conclusion

I Order the Landlord to retain \$58.00 from the security deposit plus interest of \$575.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$1,771.00**. If necessary, this order may be 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: March 18, 2016

Residential Tenancy Branch