



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Azizamalco Holdings Canada Ltd DBA Conn Lodge
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

On August 10, 2016 the tenant applied requesting return of the security deposit and compensation for damage to property and to recover the filing fee costs from the landlord.

On July 12, 2016 the landlord applied requesting compensation for damage or loss and to retain the sum from the security deposit and to recover the filing fee cost.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The tenant said he did not receive the registered mail that contained the landlords' hearing documents. The landlord had served the tenant to the forwarding address, supplied to the landlord at the end of the tenancy. The tenant was prepared to proceed.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord withdrew the claim made in the sum of \$6.78 for parking.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$120.00 representing the cost of obtaining a Writ of Possession?

Is the landlord entitled to retain the security deposit in satisfaction of the claim?

Background and Evidence

The landlord is holding a security deposit in the sum of \$497.50.

The landlord supplied a copy of an order of possession issued on June 3, 2016 (see cover for file number.) The landlord served the order to the tenant's girlfriend, who was living with the tenant. The landlord said service occurred on June 13, 2016. Both landlords' were present at the time of service. The tenants' girlfriend signed a document, confirming receipt.

The tenant was required to vacate within two days of service but did not do so. On June 30, 2016 the landlord obtained a Writ of possession. A court services receipt issued on June 30, 2016 in the sum of \$120.00 was supplied as evidence.

The landlord went directly to serve the tenant the Writ but the tenant was not home. The landlord then received a call from the tenant who said he would be moving out. The tenant did vacate the landlord did not need to enforce the Writ of possession. The landlord is seeking compensation for the cost of the Writ as the tenant did not vacate within two days of June 13, 2016.

The tenant said he girlfriend was not living with him and that he did not receive the order of possession. There was some confusion between the term order of possession and Writ of possession. I note that the decision issued on June 3, 2016, brought forward by the landlord indicates that the agent for the tenant at that hearing confirmed that the tenants' girlfriend was living with the tenant.

The tenant said that he just wants the matters to be settled. The tenant agreed to the claim for the cost of the writ of possession. The tenant also agreed to a deduction from the deposit for the filing fee imposed as part of the decision issued on June 3, 2016.

Analysis

From the evidence before me I find on the balance of probabilities that the tenant received the order of possession on June 13, 2016 when his girlfriend was served with that order. It is clear that the tenants' girlfriend was residing with him; as set out by his agent during a hearing held on June 3, 2016.

As the tenant failed to vacate the rental unit within two days of receipt of the order of possession the landlord felt compelled to obtain a Writ of possession. Even though the landlord did not need to enforce that Writ I find that the landlord is entitled to the cost claimed. If the tenant had vacated as required the landlord would not have been in the position of having to obtain the Writ.

Therefore, pursuant to section 67 of the Act I find that the landlord is entitled to compensation in the sum of \$120.00 which may be deducted from the security deposit.

Based on agreement of the tenant I find pursuant to section 67 of the Act that the landlord may retain the \$100.00 filing fee imposed on June 3, 2016, from the security deposit. The monetary order for filing fee costs issued on June 3, 2016 is now satisfied in full.

As the tenant did not raise the application he had made I find that claim for damage to property is dismissed with leave to reapply within the legislated time limit. The tenants' claim requesting return of the deposit is satisfied.

As the tenant and landlord have each paid a \$100.00 filing fee I find that filing fee costs for the current applications are set off against the other.

Therefore, the landlord is entitled to total compensation in the sum of \$220.00. I find pursuant to section 72 of the Act that the landlord may deduct the sum owed from the \$497.50 security deposit held in trust.

Residential Tenancy Branch policy suggests that when a landlord applies claiming against a deposit any residue of the deposit should be ordered returned to the tenant.

Therefore, I find that the tenant is entitled to return of the balance of the security deposit in the sum of \$277.50.

Based on these determinations I grant the tenant a monetary order in the sum of \$277.50. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to compensation as claimed for the Writ of possession.

Filing fee costs for the current applications are set off against the other.

By agreement, the landlord may retain \$100.00 from the deposit representing the filing fee ordered to be paid on June 3, 2016.

The landlord may deduct \$220.00 from the security deposit.

The landlord is ordered to return the balance of the security deposit to the tenant.

The tenant has leave to reapply in relation to the claim for damage for property.

This decision is final and binding 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: January 17, 2017

Residential Tenancy Branch