



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the corporate Landlord on July 12, 2016 to keep the Tenant’s security deposit and to recover the filing fee from the Tenant.

An agent for the Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant in the ten minute hearing or any submission of evidence. Therefore, I turned my mind to the Landlord’s service of documents for this hearing.

The Landlord testified that the Tenant was served with a copy of the Application and the Notice of Hearing documents by registered mail on July 15, 2016 to the forwarding address the Tenant provided at the end of the tenancy on the move-out Condition Inspection Report. The Landlord provided the Canada Post tracking number into oral evidence, which is detailed on the front page of this Decision. The Landlord testified that the Canada Post website shows the Tenant received and signed for the documents on July 20, 2016. Based on the undisputed evidence before me, I find the Landlord completed service pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The hearing continued to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to keep the Tenant’s security deposit in full satisfaction of the monetary claim made against the Tenant?

Background and Evidence

The Landlord testified that this tenancy started in September 2015. A number of written tenancy agreements were entered into, the latest one which started on March 1, 2016

for a fixed term due to end on June 30, 2016. After this time, that tenancy agreement stated that the tenancy was to end and the Tenant was required to move out of the rental unit. The Landlord confirmed that the tenancy ended on June 30, 2016 pursuant to the written tenancy agreement provided into evidence.

Rent under the last tenancy agreement was payable by the Tenant in the amount of \$1,500.00 on the first day of each month. The tenancy agreement contains a clause that requires the Tenant to pay a fee of \$25.00 for late payment of rent. The Landlord confirmed that she retains \$700.00 in the Tenant's security deposit which was paid at the start of the tenancy.

The Landlord confirmed that the Tenant provided her forwarding address on the Condition Inspection Report completed with the Tenant on June 30, 2016.

The Landlord testified that the Tenant failed to pay rent for May 2016 in the amount of \$1,500.00. The Tenant did pay rent for June 2016 but paid this on June 2, 2016 which the Landlord applied to unpaid rent for May 2016. As a result, the Landlord claims \$1,500.00 in unpaid rent for June 2016 and two late rent fees of \$25.00 each pursuant to the signed tenancy agreement.

The Landlord also claims the \$100.00 filing fee, but withdrew her claim for the \$100.00 cleaning fee as she failed to serve a copy of that invoice to the Residential Tenancy Branch and to the Tenant prior to this hearing. The total amount of the Landlord's monetary claim disclosed is \$1,650.00.

The Landlord testified that the Tenant paid \$925.00 to the Landlord after they had notified her of the costs incurred. The Landlord testified that the Tenant also agreed that the Landlord can keep her security deposit for the remainder of the Landlord's monetary claim but the Tenant failed to provide anything in writing to this effect. Therefore, the Landlord only seeks relief in this hearing to keep the Tenant's security deposit pursuant to Section 38(1) (d) of the Act.

Analysis

I accept the Landlord's evidence that the tenancy ended on June 30, 2016 pursuant to the signed tenancy agreement provided into evidence. I also accept the Landlord's evidence that the Tenant provided her forwarding address on the date the tenancy ended. Accordingly, I find the Landlord made the Application to keep the Tenant's security deposit within the 15 day time limit provided by Section 38(1) of the Act.

Section 26 of the Act requires a tenant to pay rent under a tenancy agreement. In relation to the Landlord's claim for June 2016 rent, I accept the undisputed evidence that the Tenant did not pay rent for May 2016 but did pay rent for June 2016 which was applied to May 2016. Therefore, the Landlord is awarded \$1,500.00 in unpaid rent.

Section 7(1) (d) of the Residential Tenancy Regulation allows a landlord to charge an administration fee up to \$25.00 for late payment of rent if the tenancy agreement provides for this fee. The Landlord provided a copy of the tenancy agreement which provides for this fee. As the Tenant failed to pay any rent for June 2016 and paid May 2016 rent late, I find the Landlord is entitled to \$50.00 in late fees.

As the Landlord has been successful in this matter, the Landlord would also be entitled to the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$1,650.00.

I accept that the Tenant has paid \$925.00 of this debt to the Landlord at the time of this hearing. Therefore, the outstanding balance owing to the Landlord is \$725.00.

The Landlord only elected to keep the Tenant's security deposit of \$700.00 in full satisfaction of the amount owing to the Landlord. Therefore, the Landlord is ordered to retain the Tenant's \$700.00 security deposit to satisfy the outstanding monetary claim against the Tenant. No interest is payable on this amount.

Conclusion

The Landlord may retain the Tenant's security deposit in full satisfaction of the monetary claim made. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 10, 2017

Residential Tenancy Branch