



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 14, 2016. The Landlord filed seeking a Monetary Order for: unpaid rent; damages to the unit, site or property; to keep the security deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by an Agent for the Landlord (the Landlord). No one was in attendance at the hearing on behalf of the Tenant. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing by registered mail on July 20, 2016. Canada Post tracking receipts were submitted in the Landlord's oral submissions.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail.

Based on the undisputed evidence of the Landlord, I find the Tenant was deemed served notice of this application and hearing on July 25, 2016, five days after they were mailed, pursuant to section 90 of the *Act*. As such, the hearing continued to hear the undisputed evidence of the Landlord in absence of the Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a fixed term written tenancy agreement that began on July 1, 2015 and switched to a month to month tenancy after December 31, 2015. Rent of \$870.00 was payable on or before the first of each month. On July 1, 2015 the Tenant paid \$435.00 as the security deposit. A move in condition inspection report was completed in the presence of both parties on July 1, 2015.

On June 2, 2016 the Landlord received a written notice to end tenancy from the Tenant that was dated July 1, 2016. I heard the Landlord state the Tenant had told him they intended to vacate the rental unit at the end of June 2016.

Both parties were represented at the move out inspection on June 30, 2016 during which the Tenant refused to sign the condition inspection report form. The Tenant provided the Landlord with her forwarding address on June 30, 2016. A copy of the condition inspection report form was submitted into evidence.

The Landlord submitted the Tenant left the rental unit requiring additional cleaning and wall repairs. He stated the amounts claimed on his application for Dispute Resolution were based on estimates and he wished to proceed with his claim based on the actual cleaning and repair costs based on the \$320.50 of receipts submitted into evidence. That amount was comprised of: \$100.00 for wall repairs and painting (4 hours @ \$25.00 per hour); \$84.00 for carpet cleaning; plus \$136.50 for drapery cleaning required due to heaving smoking in the unit.

I heard the Landlord state they were not able to re-rent the unit until August 1, 2016 due to the Tenant's late notice. As such they were claiming rent for July 2016 in the amount of \$870.00. After clarification the Landlord confirmed his claim was for loss of rent as the tenancy had ended June 30, 2016. The Landlord submitted copies of their rental advertisements which supported his submissions that they attempted to re-rent the unit for as soon as possible.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 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.
- 7(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.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

I accept the Landlord's undisputed evidence that the Tenant left the rental unit requiring additional cleaning and repairs. Therefore, I find the Tenant breached section 37 of the Act. In addition, I find the Tenant's breach caused the Landlord to suffer a loss of \$100.00 for wall repairs and painting; \$84.00 for carpet cleaning; plus \$136.50 for drapery cleaning. Accordingly, I grant the undisputed application for cleaning and repairs in the amount of **\$320.50**.

Once the Landlord regained possession they were required to mitigate there losses by trying to re-rent the unit for as soon as possible, pursuant to section 7(2) of the Act, as listed above. I find there was sufficient evidence to prove the Landlord mitigated their loss as they began advertising the unit upon receipt of the Tenant's notice to end tenancy. The Landlord was able to re-rent the unit as of August 1, 2016. However, the Landlord still suffered a loss of rent for July 2016 due to the Tenant's breach. Therefore, I conclude the Landlord is entitled to loss of rent for July 2016 in the amount of **\$870.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$435.00 security deposit since May 29, 2015.

I find this monetary award meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

Repairs and cleaning	\$ 320.50
Loss of Rent July 2016	870.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$1,290.50
LESS: Security Deposit \$435.00 + Interest \$0.00	<u>-435.00</u>
Offset amount due to the Landlords	<u>\$ 855.50</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$855.50 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$855.50** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord succeeded with their application and was awarded monetary compensation of \$1,290.50 which was offset against the Tenant's security deposit leaving a balance owed to the Landlords of **\$855.50**.

This decision is final, legally 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 20, 2017

Residential Tenancy Branch