



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding SHERLOCK ENTERPRISES LTD. 38
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for unpaid rent, authority to retain the security deposit and recovery of the filing fee.

The hearing was conducted by teleconference and was set for 1:30 p.m. on February 3, 2017. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that she personally served the Tenant with the Notice of Hearing and the Application on August 3, 2017. She further testified that her assistant, N.M. witnessed service on the Tenant.

I find the Tenant was duly served as of August 3, 2017 and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. Is the Landlord entitled to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy originally began August 1, 2008. The Tenant paid a security deposit of \$497.50. The Landlord testified that at the time the tenancy ended monthly rent was payable in the amount of \$1,173.00.

The parties have been involved in numerous arbitrations; I have recorded the file numbers relating to those previous arbitrations on the unpublished cover page of this my Decision. Most recently the Landlord obtained an Order of Possession effective July 31, 2016.

The Landlord testified that she then obtained a Writ of Possession from the B.C. Supreme Court. She stated that, fortunately, prior to incurring the cost and services of a bailiff, the Tenant vacated the rental unit. The Landlord was not able to be specific as to the date the Tenant vacated the unit, only to state that the Tenant was at the rental unit on August 3, 2016 (the date the Landlord personally served her with the hearing package for this arbitration), and that her items remained in the rental unit until August 6, 2016. The Landlord further stated that the Tenant gave her keys to the police on August 15, 2016 such that she believes this is the latest the tenant could have been in occupation of the rental unit.

As the Tenant remained in the rental unit during the month of August, and the unit was not able to be rented to others, the Landlord sought compensation for loss of rent for August 2016 in the amount of \$1,173.00.

The Landlord also sought recovery of the filing fee as well as authority to retain the Tenant's security deposit towards the amounts awarded.

Analysis

Section 7(1) of the *Residential Tenancy Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In the case before me, I find the Tenant failed to vacate the rental unit as required by the Order of Possession, which was granted pursuant to section 55 of the *Residential Tenancy Act*. I further find that the Landlord suffered a loss of rental income for the month of August 2016 as the Tenant over held the tenancy. As the Tenant was

required to pay monthly rent in the amount of **\$1,173.00**, I award the Landlord compensation in this amount in addition to recovery of the filing fee in the amount of **\$100.00** for a total award of **\$1,273.00**.

The Tenant paid a security deposit of \$497.50 which, according to the Interest Rate Calculator provided on the Residential Tenancy Branch website, accumulated \$3.12 in interest since the date of being paid. Accordingly, the Landlord holds a total of \$500.62 in trust for the Tenant as a security deposit and interest. I grant the Landlord authority pursuant to sections 72 and 38 of the *Act* to retain the Tenant's **\$500.62** security deposit and interest towards the \$1,273.00 awarded and I therefore grant the Landlord a Monetary Order for the balance due in the amount of **\$772.38**.

Conclusion

The Landlord was granted an Order of Possession of the rental unit, yet the Tenant failed to vacate the rental. By over holding her tenancy she prevented the Landlord from renting the rental unit in August of 2016. The Landlord is awarded compensation for the loss of rent for August 2016 as well as recovery of the filing fee.

The Landlord is also authorized to retain the Tenant's security deposit, in addition to the accrued interest towards the amounts awarded and is granted a Monetary Order for the balance due in the amount of **\$772.38**.

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: February 03, 2017

Residential Tenancy Branch