



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made by the corporate Landlord on August 15, 2017 for a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security and pet damage deposits; and, to recover the filing fee.

Two agents for the corporate Landlord appeared for the hearing and provided affirmed testimony. The Landlord also provided documentary and photographic evidence prior to the hearing; although no receipts for the amounts claimed for damage to the rental unit were provided for this hearing or served to the Tenant.

There was no appearance for the Tenant during the 34 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlords' agents testified the Tenant was served with a copy of the Application, and the Hearing Package by registered mail on August 17, 2016 to the Tenant's forwarding address he had provided in his notice to end the tenancy. The Landlord provided the Canada Post tracking number into oral evidence to verify this method of service. This is documented on the front page of this Decision. However, these documents were returned to the Landlord as unclaimed.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on August 22, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

The Landlord's agents explained during the hearing that they were only seeking to keep the Tenant's security and pet damage deposits (the "Deposits") in full and final satisfaction of the monetary claim. Therefore, the Landlords abandoned their claim for damages to the rental unit and I proceeded to determine the Landlord's claim for the Deposits only.

Background and Evidence

The Landlord's agents testified this tenancy started on December 1, 2014 for a fixed term of one year after which it continued on a month-to-month basis. Rent in the amount of \$850.00 was payable on the first day of each month, which was then increased to \$870.00 through a notice of rent increase. The Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$425.00, which the Landlord still retains.

The Landlords testified that the Tenant provided the Landlord with a written letter dated June 1, 2016 to end the tenancy for July 31, 2016. That letter contained the Tenant's forwarding address which was used to serve documents to the Tenant for this hearing.

The Landlord's agents testified that the Tenant was in rental arrears for \$50.00 for June 2016 rent. The Tenant then only paid \$500.00 for July 2016 rent. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") on July 3, 2017 for the unpaid rent relating to July 2016 only. The 10 Day Notice was provided into evidence and shows a vacancy date of July 13, 2016 due to \$370.00 in unpaid rent for July 2016.

The Landlord's agents testified that the Tenant failed to vacate the rental unit pursuant to the vacancy date on the 10 Day Notice or the vacancy date the Tenant had detailed on his notice to end tenancy. The Landlord's agents testified that the Tenant did not vacate the rental unit until August 11, 2016 and failed to appear for the move-out condition inspection of the rental unit which was arranged prior to the tenancy ending. The Landlord's agents testified to clause 12 of the tenancy agreement which provided for a \$25.00 late rent payment fee.

As a result, the Landlord now claims: \$50.00 of unpaid rent for June 2016; \$370.00 of unpaid rent for July 2016; \$25.00 for the late payment fee for July 2016; and \$308.00 for prorated rent pertaining to the period of August 1 to August 11, 2016 when the Tenant still had control and possession of the rental unit as he had not returned the keys.

Analysis

I accept the undisputed evidence before me that this tenancy ended on August 11, 2016 and that the Tenant provided the Landlord with his forwarding address on June 1, 2016. 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 unpaid rent, I accept the undisputed evidence that the Tenant is in rental arrears for the amount of **\$728.00** (\$50.00 + \$370.00 + \$308.00, which is hereby awarded to the Landlord.

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. I am satisfied by the Landlord's agents' undisputed oral evidence that the tenancy agreement provides for this fee which is hereby awarded to the Landlord. 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 \$853.00.

The Landlord only elected to keep the Tenant's Deposits of \$850.00 in full satisfaction of the amount owing to the Landlord. Therefore, the Landlord is ordered to retain the Tenant's \$850.00 in Deposits to satisfy the outstanding monetary claim against the Tenant. No interest is payable on this amount.

Conclusion

The Landlord abandoned the monetary claim for damages to the rental unit. The Landlord may retain the Tenant's security deposit in full and final satisfaction of the monetary claim for unpaid rent. 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: February 14, 2017

Residential Tenancy Branch