



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, an Order of Possession for Cause; a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Agent for Landlord stated that on August 30, 2017 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on August 29, 2017 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 02, 2017 the Landlord submitted an Amendment to the Application for Dispute Resolution and additional evidence to the Residential Tenancy Branch. The Agent for Landlord stated that on October 02, 2017 all of these documents were served to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 19, 2017 the Tenant submitted evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

When the Landlord served the Tenant with the Amendment to the Application for Dispute Resolution, the Landlord also served the Tenant with a Monetary Order Worksheet that explains why the Landlord is seeking compensation of \$3,602.50.

The Agent for the Tenant stated that the Tenant understood the items listed on the Monetary Order Worksheet were the claims that would be discussed at these proceedings. On the basis of this testimony I am satisfied that the Tenant understood the Landlord was making a claim for all the items listed on that Worksheet, and those items will be considered at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent/lost revenue, parking fees, late fees, liquidated damages, and cleaning costs?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on February 01, 2017;
- the tenancy was for a fixed term, the fixed term of which was to end on January 31, 2018;
- the Tenant agreed to pay monthly rent of \$1,175.00 by the first day of each month;
- there is a clause in the addendum to the tenancy agreement that requires the Tenant to pay a fee of \$25.00 whenever the rent is not paid when it is due;
- there is a clause in the addendum to the tenancy agreement that requires the Tenant to pay \$587.50 if the Tenant breaches a material term of the tenancy agreement that causes the Landlord to end the tenancy prior to the end of the fixed term of the tenancy;
- the Tenant paid a security deposit of \$587.50;
- the Tenant paid \$5.50 in rent for July that was applied to outstanding rent for June of 2017;
- the Tenant only paid \$805.00 toward rent for July of 2017;
- the paid no rent for August of 2017;
- the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 23, 2017;
- the tenancy ended on the basis of this Notice to End Tenancy; and
- the Tenant provided a forwarding address on September 03, 2017.

The Agent for the Landlord stated that the rental unit was vacated on September 02, 2017. The Agent for the Tenant stated that the rental unit was vacated on August 31, 2017.

The Landlord is seeking \$1,445.00 in unpaid rent. The Tenant does not dispute this claim.

The Landlord applied for compensation of \$70.00 for unpaid parking fees. At the hearing the Agent for the Landlord stated that the Tenant currently owes \$20.00 for unpaid parking fees. The Tenant does not dispute that he owes \$20.00 for parking fees.

The Landlord applied for compensation of \$100.00 for late fees. At the hearing the Agent for the Landlord reduced the amount of this claim to \$50.00. The Agent for the Landlord contends that the Tenant owes \$50.00 in late fees for the months of July and August of 2017. The Tenant does not dispute that he owes \$50.00 for late fees.

The Landlord applied for compensation of \$587.50 in liquidated damages because this tenancy ended prior to the end of the fixed term of the tenancy as a result of the Tenant not paying rent. The Tenant does not dispute the application for liquidated damages.

The Landlord is seeking to retain \$125.00 from the security deposit in compensation for cleaning the rental unit. The Landlord submitted a copy of the condition inspection report, in which the Tenant agreed that the Landlord could retain this amount from his security deposit in compensation for cleaning.

The Tenant agreed that he signed the condition inspection report on September 03, 2017 in which he agreed the Landlord could retain \$125.00 from his security deposit in compensation for cleaning. The Agent for the Tenant stated that the Tenant only agreed to the deduction because the Landlord told him he would be charged more for cleaning if he did not agree to the deduction. The Agent for the Tenant stated that they would like to see proof that the Landlord actually paid \$125.00 for cleaning before they agree to pay this amount.

The Landlord is seeking compensation of \$1,175.00 for loss of revenue for the month of September of 2017. The male Agent for the Landlord stated that the Landlord would not have lost revenue if the tenancy had not ended prior to the fixed term of the tenancy. He stated that the rental unit was advertised and on August 26, 2017 the Landlord was able to find new a new tenant, but that new tenant did not wish to move into the rental unit until October 01, 2017.

The Tenant contends that the Landlord could have delayed entering into a tenancy agreement until the Landlord could find a tenant who was willing to move in on September 01, 2017, in which case the Landlord would not have experienced a loss of revenue for that month.

In adjudicating this matter I find it reasonable for the Landlord to enter into a tenancy agreement with a new tenant on August 26, 2017, even though that tenant was not willing to begin the tenancy until October 01, 2017. Given that there were only 5 days left in the month of August I find that it was unlikely that the Landlord would have been able to find a suitable tenant for September 01, 2017, as most responsible tenants would not wait until that late date to find new accommodations.

Analysis

As the Tenant does not dispute the Landlord's claim for unpaid rent, in the amount of \$1,445.00, I find that the Landlord is entitled to this amount.

As the Tenant does not dispute the Landlord's claim for unpaid parking fees, in the amount of \$20.00, I find that the Landlord is entitled to this amount.

As the Tenant does not dispute the Landlord's claim for late fees, in the amount of \$50.00, I find that the Landlord is entitled to this amount.

As the Tenant does not dispute the Landlord's claim for liquidated damages, in the amount of \$587.50, I find that the Landlord is entitled to this amount.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

On the basis of the condition inspection report submitted in evidence, I find that the Tenant signed that report after the end of the tenancy in which he agreed the Landlord could retain \$125.00 from his security deposit for cleaning. I therefore find that the Landlord has the right to retain this amount, pursuant to section 38(4)(a) of the *Act*.

I find it irrelevant that the Tenant only agreed to the \$125.00 deduction because he was told that he would have to pay more than that amount if he did not agree to that deduction. I find it may be entirely true that the actual cost of cleaning the unit may have been more than \$125.00. At any rate, the Tenant could have opted to refuse to sign the condition inspection report and then dispute the amount of the claim for cleaning at any subsequent proceeding.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due, which resulted in the Landlord ending the tenancy prior to the end of the fixed term of the tenancy. I find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*. In these circumstances, I find that the Tenant must pay \$1,175.00 to the Landlord for the loss of revenue that the Landlord experienced in September of 2017.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$3,502.50, which includes \$1,445.00 in unpaid rent, \$20.00 for parking fees, \$50.00 for late fees, \$587.50 in liquidated damages, \$125.00 for cleaning, \$1,175.00 for loss of revenue, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$587.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,915.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 17, 2017

Residential Tenancy Branch