



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on June 29, 2017 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on June 28, 2017 were sent to the Tenant, via registered mail, at the service address noted on the Application. The Tenant acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On November 17, 2017 the Landlord submitted 9 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on November 13, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 01, 2017 the Tenant submitted 49 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on November 30, 2017. The Landlord acknowledged receiving this evidence and it was 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.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Preliminary Matter #1

During the hearing the Landlord withdrew his application to recover a \$200.00 strata fine. That matter was, therefore, not considered at these proceedings.

Preliminary Matter #2

The Tenant submitted a monetary Order worksheet and evidence in support of a monetary claim. She was advised that she must file an Application for Dispute Resolution in which she applies for a monetary Order before her claims for financial compensation can be considered. The Tenants application for a monetary Order was not considered at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent/lost revenue or late fees?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on October 15, 2016;
- the Tenant agreed to pay monthly rent of \$850.00 by the first day of each month;
- the Tenant paid a security deposit of \$425.00;
- the Tenant did not pay any rent for or May of 2017;
- there is a clause in the tenancy agreement that requires the Tenant to pay a fee of \$25.00 if rent is not paid when it is due;
- on May 05, 2017 the Landlord served the Tenant with a Ten Day Notice to End Tenancy; and
- the Ten Day Notice to End Tenancy declared that the rental unit must be vacated by May 18, 2017.

The Tenant stated that she sent her forwarding address to the Landlord, via registered mail, on June 05, 2017. The Landlord stated that he received the forwarding address on June 15, 2017. The Tenant submitted documentation from Canada Post which indicates the Landlord received the Tenant's registered mail on June 15, 2017.

The Tenant argued that the Landlord did not return her security deposit on time because he is deemed to have received her forwarding address on June 10, 2017.

The Tenant stated that she did not pay rent for May of 2017 because of problems with the rental unit, including that people were smoking in the residential complex. The Landlord is seeking compensation of \$850.00 in rent for May.

The Tenant stated that the rental unit was vacated on June 01, 2017. The Landlord stated that he does not know when the unit was vacated.

The Tenant stated that on June 02, 2017 she informed the Landlord the rental unit had been vacated, via an electronic message. The Landlord stated that the Tenant informed him the rental unit had been vacated, via an electronic message, on June 03, 2017.

The Landlord is seeking compensation of \$850.00 in lost revenue for June of 2017 due to the fact the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy that was served to her on May 05, 2017.

The Landlord stated that he did not begin advertising the rental unit until June 20, 2017 as he was very busy. He stated that he was able to locate a new tenant for July 01, 2017.

The Landlord is seeking to recover \$50.00 in "late fees" because the rent was not paid when it was due on May 01, 2017 and June 01, 2017.

Analysis

On the basis of the testimony of the Landlord and the Canada Post documentation, I find that the Landlord received the Tenant's forwarding address on June 15, 2017. As the Landlord filed his Application for Dispute Resolution on June 27, 2017, I find that he complied with the timelines established by section 38 of the *Residential Tenancy Act* (*Act*). As the Landlord complied with the timelines established by section 38 of the *Act*, I find that he is not subject to the penalty imposed by section 38(6) of the *Act* (return of double the deposit).

In adjudicating this matter I am mindful of section 90 of the *Act*, which stipulates that a document served by mail is "deemed received" on the 5th day after it is mailed. The "deemed received" provisions of the *Act* apply only when there is no clear evidence of when a document was actually received. In these circumstances the evidence clearly shows the package that was mailed on December 05, 2017 was received by the Landlord on December 15, 2017. I find that this evidence is the compelling evidence and the deemed service provisions do not apply.

Section 26(1) of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I therefore find that the Tenant was obligated to pay rent for May of 2017 even if there were deficiencies with the rental unit, including that people were smoking in the residential complex.

On the basis of the undisputed evidence I find that the Tenant has not paid rent for May of 2017. As she was required to pay rent of \$850.00 on May 01, 2017, I find that she was obligated to pay that amount pursuant to section 26(1) of the *Act*.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for June 01, 2017. I therefore find that the Tenant must compensate the Landlord for the loss of revenue he experienced between June 01, 2017 and June 15, 2017, which is \$425.00.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the

regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

I find that the Landlord did not take reasonable steps to minimize the loss of revenue he experienced between June 15, 2017 and June 30, 2017. In reaching this conclusion I was heavily influenced by the Landlord's testimony that he did not advertise the rental unit until June 20, 2017, which is more than two weeks after he became aware that the unit had been vacated. I find that it is entirely possible that the Landlord would have been able to locate a new tenant for June 15, 2017 if the Landlord had advertised the unit in a timelier manner. I therefore dismiss the Landlord's application for lost revenue for the period between June 15, 2017 and June 30, 2017.

On the basis of the undisputed evidence I find there is a term in the tenancy agreement, which requires the Tenant to pay a fee of \$25.00 whenever she is late paying rent. As the rent was not paid when it was due on May 01, 2017 I find that the Tenant must pay a fee of \$25.00 to the Landlord.

As the rental unit was vacated on June 01, 2017 I find the Tenant was not obligated to pay rent for June. As the Tenant was not late in paying her rent for June, I dismiss the Landlord's application for a late fee of \$25.00 for June.

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 \$1,400.00, which includes \$850.00 in unpaid rent for May of 2017, \$425 in lost revenue for June of 2017, a late fee of \$25.00, 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 \$425.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$975.00. In the event that 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: December 12, 2017

Residential Tenancy Branch