



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNDC, 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 an Order of Possession, a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. At the outset of 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 the Landlord stated that on July 20, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates this statement. She stated that the service address was provided to the Landlord at the end of the tenancy.

In the absence of evidence to the contrary I find that the aforementioned documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

The Landlord submitted an Amendment to an Application for Dispute Resolution and 25 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates this statement. I find that these documents were served in accordance with section 89 of the *Act* and the evidence was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, to liquidated damages, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on June 01, 2017;
- the tenancy was for a fixed term, the fixed term of which ended on May 31, 2018;
- the rental unit was vacated on June 27, 2017;
- the Tenant agreed to pay rent of \$985.00 per month by the first day of each month;
- the Tenant paid a security deposit of \$399.00;
- the Tenant did not pay rent for June of 2017; and
- the Landlord ended this tenancy by serving the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent.

The Landlord is seeking to recover \$886.50 in rent for June of 2017, as no rent was paid for that month. The Agent for the Landlord stated that the Landlord pro-rated the claim for rent for June to reflect the fact the unit was vacated on June 27, 2017.

The Landlord is seeking \$25.00 for a late fee because the Tenant did not pay rent when it was due in June of 2017. There is a clause in the tenancy agreement, which was submitted as evidence, which requires the Tenant to pay a fee of \$25.00 whenever his rent is not paid on time.

The Landlord is seeking \$50.00 for a NSF fee because the Tenant's preauthorized electronic payment for June was refused due to insufficient funds. There is a clause in the tenancy agreement that requires the Tenant to pay a fee of \$25.00 whenever a payment is "returned".

At the hearing the Agent for the Landlord withdrew the claim of \$25.00 for an "admin fee" and \$7.00 for a "GST fee".

The Landlord is seeking \$105.00 in cleaning costs and \$10.00 for replacing 2 blinding "slats" that went missing during the tenancy. The Agent for the Landlord stated that employees of the Landlord spent three hours cleaning the rental unit because the rental unit was not left in reasonably clean condition at the end of the tenancy and that it cost \$10.00 to replace the "slats".

The Landlord is claiming \$492.00 in “liquidated damages”. There is a clause in the tenancy agreement that requires the Tenant to pay this amount if the Tenant breaches a material term of the agreement that “causes the landlord to end the tenancy before the end of any fixed term”. The Agent for the Landlord stated that this tenancy ended because the Tenant did not pay rent for June, which resulted in the Landlord serving a Ten Day Notice to End Tenancy for Unpaid Rent.

The Landlord is seeking to recover a rent incentive from May, in the amount of \$174.19. Although this fixed term tenancy began on June 01, 2017 there is a notation on the tenancy agreement that the Tenant paid pro-rated rent of \$683.71 for the month of May of 2017.

There is a term in the tenancy agreement that refers to a rent incentive of \$200.00 per month. This term stipulates that an “incentive equivalent to \$200 will be applied towards rent for the months of June 2017 to May 2018”. The term clearly stipulates that the incentive “is applicable to the initial term of the lease only” and that the Tenant will be liable for repayment of the incentive if the agreement is not “fulfilled”.

Analysis

On the basis of the undisputed evidence I find that the parties entered into a fixed term tenancy agreement, the fixed term of which began on June 01, 2017 and ended on May 31, 2018. On the basis of this tenancy agreement I find that the Tenant agreed to pay rent of \$985.00 by the first day of each month.

On the basis of the undisputed evidence I find that the Tenant did not pay any of the rent that was due on June 01, 2017. As the Tenant was obligated to pay rent when it was due, pursuant to section 26 of the Act, I find that the Tenant was obligated to pay the \$995.00 that was due on June 01, 2017. I therefore grant the Landlord the full amount of their claim for unpaid rent for June of 2017, which was \$886.50.

As the Tenant did not pay his rent when it was due on June 01, 2017 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of June of 2017.

As the Tenant’s preauthorized electronic rent payment for June was not honoured by his banking institution and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever a payment is returned, I find that the Landlord is entitled to a NSF fee of \$25.00 for the month of June of 2017.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy and he failed to replace the blinding “slats” that went missing during the tenancy. I therefore find that the Landlord is entitled to compensation for the claim of \$115.00 for rectifying those issues.

I find that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$492.00 to the Landlord if his actions cause the Landlord to prematurely end this fixed term tenancy. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$492.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

On this basis of the undisputed evidence I find that this tenancy ended because the Tenant did not pay rent for June of 2017, which resulted in the Landlord serving a Ten Day Notice to End Tenancy. I therefore find that the Landlord is entitled to collect liquidated damages of \$492.00.

On the basis of the entry on the tenancy agreement, I find that the Tenant was permitted to move into the rental unit prior to the beginning of the fixed term; with the understanding he would pay pro-rated rent of \$683.71.

I find that the term in the tenancy agreement regarding the rent incentive of \$200.00 does not apply to May of 2017. As the term clearly stipulates that an “incentive equivalent to \$200 will be applied towards rent for the months of June 2017 to May 2018”, I find that there is insufficient evidence to establish that the Tenant agreed a rent incentive for May of 2017. I therefore dismiss the application to recover a rent incentive for May of 2017.

I find that the Landlord’s Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,643.50, which includes \$886.50 for unpaid rent from June of 2017, \$115.00 for cleaning and repairing damage, \$50.00 for late/NSF fees, \$492.00 in liquidated damages, 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 retain the Tenant's security deposit of \$399.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,244.50. In the event the Tenant does not voluntarily 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: January 12, 2018

Residential Tenancy Branch