



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aquilini Properties LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This decision pertains to the landlord's application for dispute resolution made on May 24, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord seeks a monetary order for unpaid rent pursuant to section 67 of the Act, and a monetary order for recovery of the filing fee pursuant to section 72(1) of the Act.

The tenant and the landlord's agent (also referred to as the "landlord" herein) attended the hearing before me, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she served the tenant with the Notice of Dispute Resolution Proceeding package on June 1, 2018, by registered mail. I find that the tenant was served with the Notice of Dispute Resolution Proceeding package pursuant to section 89(2)(b) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent?
2. Is the landlord entitled to a monetary order for recovery of the filing fee?
3. If the landlord is entitled to one or both monetary orders, are they entitled to retain the tenant's security deposit in full or partial satisfaction of those orders?

Background and Evidence

The landlord testified that the tenant commenced tenancy on March 1, 2018, and ended the tenancy (and vacated the rental unit) on May 14, 2018. Monthly rent was \$1,695.00, due on the first of the month, and the tenant paid a security deposit in the amount of \$847.50. A copy of the written tenancy agreement was submitted into evidence. On May 2, 2018, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent

or Utilities (the "Notice") for failing to pay rent in the amount of \$1,695.00 that was due on May 1, 2018. The landlord testified that she served the Notice on May 2, 2018, by posting it on the tenant's door at the address where the tenant resided. The effective end of tenancy date was May 14, 2018. A copy of the Notice was submitted into evidence. The tenant submitted into evidence a copy of a notice, dated May 8, 2018, to the landlord confirming that she was moving out on May 14, 2018. The landlord noted that they received the tenant's forwarding address via email on May 16, 2018.

The landlord testified that the landlord revises its claim to \$2,542.50, which represents rent for the May 2018 and for the first two weeks of June 2018, as the rental unit was not rented until June 15, 2018. The landlord submitted copies of Craigslist ads posted May 11, May 14 and May 22 in which the rental unit was listed for rent.

The tenant testified that she lost her job and could not afford to pay rent. She said she allowed the landlord to show prospective tenants the rental unit. Finally, she testified that she never received copies of the advertisements to which the landlord refers.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute it. The landlord provided oral and documentary evidence to establish that the tenant did not pay rent when due, and the tenant acknowledged that she was unable to pay rent. Further, I have no evidence before to find that the tenant applied for dispute resolution.

Taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent for May 2018.

Regarding the landlord's claim for an additional half month's rent in the amount of \$847.50, I was not presented with any documentary evidence beyond copies of three Craigslist ads posted for the rental unit. No copies of any other advertisements, or advertisements into June 2018, were submitted. Nor did the landlord present evidence as to what reasonable efforts beyond the three ads were made by the landlord in attempting to rent the rental unit. As such, taking into consideration all of the oral and documentary evidence presented before me regarding this aspect of their claim, I do not find on a balance of probabilities that the landlord has met the onus of proving a claim

for compensation for lost rent from June 1 to June 14, 2018, inclusive.

Given the above, however, and pursuant to section 67 of the Act, I find that the landlord is entitled to a monetary award of \$1,695.00 for unpaid rent. I order that the entire amount of the security deposit held (\$847.50) be applied to the award granted to the landlord in partial satisfaction of the claim.

Pursuant to section 72(1) of the Act, I hereby grant the landlord a monetary award of \$100.00 for recovery of the filing fee.

Conclusion

I hereby grant the landlord a monetary order in the amount of \$947.50. This order must be served on the tenant and may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

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: August 16, 2018

Residential Tenancy Branch