



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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 a monetary Order for unpaid rent/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.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to the Tenant's service address, via registered mail. He stated that the service address was provided by the Tenant after the tenancy ended. The Landlord submitted a Canada Post receipt that shows documents were mailed to the service address on July 18, 2014.

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

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent/utilities, liquidated damages, and damages to the rental unit?

Is the Landlord entitled to keep all or part of the security deposit?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement which appears to be signed by the Tenant, which indicates the Tenant entered into a fixed term tenancy agreement, the fixed term of which runs from October 01, 2013 to September 30, 2014.

The tenancy agreement declares that rent of \$680.00 is due by the first day of each month and that the Tenant must pay \$275.00 in liquidated damages if the Tenant prematurely ends the fixed term tenancy agreement.

The Agent for the Landlord stated that the Tenant paid a security deposit of \$340.00.

The Agent for the Landlord stated that the Tenant only paid \$140.00 of the rent that was due for June of 2014 and that on an unknown date in June the Landlord served the Tenant with a Ten

Day Notice to End Tenancy that required the Tenant to vacate the rental unit on an unknown date in June. He stated that the Tenant vacated the rental unit sometime during the latter part of June without paying the outstanding rent of \$540.00. The Landlord is seeking compensation for unpaid rent from June.

The Landlord is seeking compensation for liquidated damages as the Tenant's failure to pay rent resulted in the premature end to this fixed term tenancy.

The Agent for the Landlord stated that the Tenant was required to pay for hydro costs incurred during the tenancy. The Landlord is seeking compensation if \$115.69 in unpaid hydro costs of that were incurred during the tenancy. The Landlord did not submit documentation to support the claim that costs of \$115.69 were incurred.

The Agent for the Landlord stated that the rental unit required cleaning at the end of the tenancy. The Landlord submitted a condition inspection report, which appears to be signed by the Tenant, which corroborates this testimony. The Agent for the Landlord stated that a professional cleaning company cleaned the unit, for which the Landlord was charged \$186.00. The Landlord did not submit a copy of the receipt for cleaning.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a fixed tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$680.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenant did not pay \$540.00 of the rent that was on June 01, 2014. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$540.00 in outstanding rent to the Landlord.

On the basis of the undisputed evidence, I find that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$275.00 to the Landlord if they 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 \$275.00 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. As this tenancy ended before the end of the fixed term as a direct result of the Tenant failing to pay rent, I find that the Tenant must pay \$275.00 in liquidated damages.

On the basis of the undisputed evidence, I find that the Tenant was required to pay for hydro costs incurred during the tenancy. I find that the Landlord submitted insufficient evidence, specifically a copy of the hydro bill, which shows the hydro costs of \$115.69 were incurred and were not paid. I therefore dismiss the Landlord's claim for hydro charges.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing

that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37 of the *Act* when he did not leave the rental unit in reasonably clean condition. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the rental unit. In reaching this conclusion, I was heavily influenced by the absence of any documentary evidence, such as a receipt, that corroborates the claim. When a receipt is, or should be, available to support a claim, I find that the receipt should be submitted in evidence. I therefore dismiss the Landlord's claim for compensation for cleaning.

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 \$865.00, which is comprised of \$540.00 in unpaid rent, \$275.00 in liquidated damages, and \$50.00 in compensation for the filing fee paid by the Landlord for 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 \$340.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$525.00. 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 *Residential Tenancy Act*.

Dated: December 19, 2014

Residential Tenancy Branch

