



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

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, 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 on June 20, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to each Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The Agent for the Landlord stated that on July 24, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to the Tenant, via email. The Tenants acknowledged receipt of these documents.

On July 07, 2015 the Landlord submitted 31 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were served to the Tenants by email. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On November 15, 2015 the Landlord submitted 8 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were not served to the Tenants. As the documents were not served to the Tenants they were not considered when determining the merits of the Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

With the consent of all parties, the Application for Dispute Resolution was amended to reflect the spelling of the name of the Tenant with the initials "S.R.", as it was provided by her at the hearing.

Preliminary Matter #2

At the outset of the hearing the Agent for the Landlord asked to amend the application to include lost revenue for the month of July, due to the fact the unit was not fully vacated until July 01, 2015.

I declined the request to amend the Landlord's Application for Dispute Resolution, as the Landlord did not amend the Application for Dispute Resolution in accordance with rule 2.5 of the Residential Tenancy Branch Rules of Procedure. Rule 2.5 stipulates that a copy of the amended application must be served on the other party at least five days before the scheduled date of the dispute resolution hearing. I find that the Landlord had ample time to amend the Application prior to the date of the hearing.

Given that the Landlord had ample time to amend this Application for Dispute Resolution in accordance with rule 2.5 of the Residential Tenancy Branch Rules of Procedure, I dismiss the Landlord's application to include a claim for lost revenue. I find that amending the claim at this late date makes it difficult, if not impossible, for the Tenants to prepare an adequate response to the new claim and I therefore find that it would be prejudicial to the Tenants to allow the amendment.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree:

- the Tenants moved into the rental unit in August of 2014;
- the Tenants paid pro-rated rent of \$353.06 for rent in August;
- the Tenants agreed to pay rent of \$995.00 by the first day of each month;
- the Tenants paid a security deposit of \$497.50;
- the Tenants paid a pet damage deposit of \$497.50;
- on September 01, 2014 Tenant #2 signed a pre-authorized debit form authorizing the Landlord to withdraw rent from her account; and
- the rental unit was vacated on July 01, 2015.

The Landlord submitted a bank draft for \$497.50, dated August 19, 2015, with a notation on it that appears to indicate the payment was for a pet damage deposit. The Landlord submitted a bank draft for \$497.50, dated August 09, 2015, with a notation on it that appears to indicate the payment was for a security deposit. These payments appear to coincide with the resident ledger entry of August 28, 2014.

The Agent for the Landlord stated that the Landlord believed that rent was being withdrawn from the Tenant's bank account in accordance with the pre-authorized debit form that had been signed in September of 2014. He stated that in May of 2015 the Landlord realized that rent was not being automatically deposited into the Landlord's account. He stated the error was not noticed prior to May of 2015 due to an administrative error on the part of the Landlord.

The Agent for the Landlord stated that no rent was collected for September of 2014, October of 2014, November of 2014, December of 2014, January of 2015, February of 2015, March of 2015, April of 2015, or May of 2015. He stated that the Landlord attempted to collect rent on June 01, 2015 in accordance with the pre-authorized debit form once the Landlord realized the rent was not being collected and that payment was not honored due to insufficient funds.

The Landlord and the Tenants agree that the Tenants paid rent of \$845.00, in cash, after they were advised that the June 01, 2015 rent payment did not clear. The parties agree that the Landlord allowed the Tenants to reduce the rent payment for June by \$150.00 to compensate them for the cost of investigating whether rent payments had been deducted from their account for any period prior to June 01, 2015.

The Tenants contend that rent has been deducted from their bank in accordance with the pre-authorized debit form for every month in the tenancy, with the exception of August of 2014 and June of 2015. The Landlord and the Tenants agree that rent for those months have been paid in full.

The Landlord submitted a Resident Ledger which reflects the following payments:

- \$995.00 on August 28, 2014, which I presume is the security/pet damage deposits paid in August;
- \$353.06 on August 28, 2014 for rent for August;
- \$995.00 direct deposit on June 01, 2015, which was reversed on June 04, 2015;
- \$995.00 direct deposit on June 05, 2015, which was reversed on June 10, 2015; and
- \$845.00 cash payment on June 08, 2015.

The Landlord submitted a General Ledger for the residential complex which reflects all payments the Landlord recorded between August of 2014 and June of 2015. This ledger reflects only the aforementioned payments for the Tenants.

The Tenants provided the Landlord with a bank statement for the period between October 01, 2014 and October 02, 2014, which the Landlord submitted in evidence. This statement indicates that \$995.00 was deducted by preauthorized debit on October 01, 2014.

The Tenants provided the Landlord with a bank statement for the period between November 01, 2014 and November 05, 2014, which the Landlord submitted in evidence. This statement indicates that \$995.00 was deducted by preauthorized debit on November 01, 2014.

The Tenants provided the Landlord with a bank statement for the period between December 01, 2014 and December 03, 2014, which the Landlord submitted in evidence. This statement indicates that \$995.00 was deducted by preauthorized debit on December 01, 2014.

The Tenant stated that the bank was unable to identify the recipient of the preauthorized debit payments, including whether or not the payments were made to the Landlord.

The Landlord and the Tenants agree that the parties exchanged a series of emails in September of 2015, in which the Tenant #2 stated that she will pay \$8,955.00 to the Landlord if the Landlord is willing to withdraw this Application for Dispute Resolution.

Tenant #2 stated that she agreed to pay \$8,955.00 to the Landlord, in part, because she did not want this dispute on record and she wished to avoid the stress of these proceedings and the Landlord's attempt to collect the alleged debt.

The parties were advised that I believe this email communication is extremely relevant to the issues in dispute. The parties were therefore advised that they each have the right to submit a copy of the email communications they exchanged in September of 2015; that any emails they submit to the Residential Tenancy Branch must be served to the other party; and that they must submit proof that the emails were served to the other party. The parties were advised that they have until December 04, 2015 to submit this evidence and that my decision will be made without the benefit of those emails if they are not received by December 04, 2015.

On November 30, 2015 the Landlord submitted an email from Tenant #2, dated September 15, 2015, in which she declares, in part: "Well im looking at the dispute claim. It says 8955. Im willing to repay that." (sic)

On November 30, 2015 the Landlord submitted documentation that indicates the aforementioned email was forwarding to the Tenant on November 30, 2015.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$995.00 by the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord when it is due.

On the basis of the evidence submitted by the Landlord, specifically the Resident Ledger and the General Ledger, I find that the Landlord did not receive rent for September of 2014, October of 2014, November of 2014, December of 2014, January of 2015, February of 2015, March of 2015, April of 2015, or May of 2015. I therefore find that the Tenants owe rent of \$8,955.00 for these months.

In adjudicating this claim I find that no evidence has been submitted to corroborate the Tenants' submission that they paid rent, by preauthorized debit, September of 2014, January of 2015, February of 2015, March of 2015, April of 2015, or May of 2015. I therefore cannot conclude that rent was paid for these months.

In adjudicating this claim I have placed limited weight on the bank statements provided to the Landlord for October, November, and December of 2015. While these bank statements corroborate the Tenants' submission that \$995.00 was withdrawn at the beginning of the month, the bank statements only reflect the activity during the first few days of those months. I find it entirely possible that the preauthorized debit was reversed later in each month due to an administrative error that prevented the bank from forwarding the payment to the Landlord.

In adjudicating this claim I have considered the Tenants' submission that the bank was unable to identify the recipient of the preauthorized debit payments, including whether or not the payments were made to the Landlord. I find it extremely unlikely that a bank would be unable to inform a client of the full details of any preauthorized debit payment that was made on behalf of the Tenant.

In adjudicating this claim I have considered the email Tenant #2 sent on September 15, 2015. I find that the Tenant's offer to pay the \$8,955.00 in rent is an indication that the rent has not

been paid, as I find it highly unlikely that any tenant would agree to pay rent that has already been paid. I find the Tenant's explanation for agreeing to pay the rent lacks credibility, given the amount of the arrears.

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 \$9,055.00, which is comprised of \$8,955.00 in unpaid rent and \$50.00 in compensation for fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenants' security deposit and pet damage deposit of \$995.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$8,060.00. In the event the Tenants do not comply with this Order, it may be served on the Tenants, 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 07, 2015

Residential Tenancy Branch

