



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the corporate landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security and pet damage deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent, CM (the "landlord"). The co-tenant SM represented both tenants (the "tenant").

As both parties were in attendance I confirmed service of documents. The tenant confirmed that she had received the landlord's application for dispute resolution and his evidentiary materials. I find that the tenant was duly served with the landlord's application package in accordance with sections 88 and 89 of the *Act*. The tenant testified that she had not served the landlord with her evidence package.

Rule 3.15 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure requires that respondents provide their written evidence at least 7 days prior to a hearing. In this situation, I find no reason why this evidence could not have been provided to the landlord so as to comply with the seven-day time requirement outlined in Rule 3.15. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

As the tenant testified that she had neglected to serve the landlord, I find that the tenants' failure to serve the landlord with the evidence to be prejudicial to the landlord.

Under the circumstances, I advised the parties that I would only allow the tenant to rely upon those pieces of written evidence that the landlord confirmed having received on prior occasions (e.g., a copy of the tenancy agreement; the condition inspection report) to be entered. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure, which outlines the circumstances whereby an Arbitrator can consider late evidence provided it does not unreasonably prejudice one party.

During the hearing the landlord applied to amend their claim by lowering the monetary amount claimed. The landlord testified that they are only seeking the amount of \$1,500.00 and withdrew the portion of the claim seeking recovery of the filing fee and any additional amount. Pursuant to section 64(3)(c) of the act and Rule 4.2 of the Rules of Procedure I amend the landlord's application to decrease the landlord's monetary claim from \$1,850.00 to \$1,500.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit and pet damage deposit for this tenancy?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in April, 2016 and ended on February 28, 2017. The tenancy agreement signed by the parties provides that the tenancy ends on March 31, 2017. During the tenancy the monthly rent was \$1,500.00 payable on the first of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 was paid by the tenants at the start of the tenancy and is still held by the landlord.

The tenants provided written notice to the landlord on January 31, 2017 of their intention to vacate the rental unit at the end of February. The tenants vacated on February 28, 2017. The parties completed and signed a move-out condition inspection report on that date.

The landlord testified that they were unable to find a new tenant for the rental unit until May 1, 2017. The landlord testified that they took all reasonable steps by advertising the rental unit on several online listings and instructing the property manager to arrange showings.

The landlord said that the Monetary Order sought was in reflection of \$1,500.00 in rent for March 2017. The landlord also said that the additional terms of the tenancy agreement provides in section 13 that the tenant will forfeit the security deposit and pet damage deposit in the event the tenant breaks the lease. A copy of the residential tenancy agreement signed by the parties was submitted into written evidence.

The tenant testified that during a previous hearing before this Branch on a separate matter the landlord agreed to the date of February 28, 2017 for the end of the tenancy. The tenant said that pursuant to this agreement she provided written notice and was not informed of any issues by the landlord. The tenant believes that because of an earlier agreement the landlord consented to the early termination of the tenancy and is not entitled to the equivalent of the rent for the month of March, 2017.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." In this case, written notice was provided to the landlord on January 31, 2017. The landlord testified that upon receipt of this notice they took reasonable action by posting an online ad listing the unit on multiple services and instructing their property manager to arrange showings. I find that the landlord has made reasonable efforts to find a new tenant to move in to the rental unit.

I do not find that there is sufficient evidence in support of the tenants' position that the early end of the tenancy was agreed upon by the landlord. I find that there is no written evidence of such an agreement and the landlord disputes that such an agreement was made.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of

the tenancy agreement occurred by the tenants, that the landlord had to make efforts to rectify this violation and that landlord is entitled to compensation as per section 13 of the tenancy agreement signed by the parties.

The landlord has also applied to retain the security deposit from the tenants. Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file a claim against a tenant's deposit within 15 days of the *later* of the end of the tenancy or the date a tenant's forwarding address is received in writing. I accept that the tenants provided the forwarding address to the landlord when moving out on February 28, 2017. The landlord has fulfilled the requirements of section 38 of the *Act* by filing an application to retain the security deposit and pet damage deposit on March 7, 2017, within the 15 days provided. Subsection 4 of this section states that, "A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount." I find that the landlord has suffered a loss as a result of this tenancy and may therefore retain the security deposit and pet damage deposit pursuant to section 38 and 72 of the *Act* against the monetary award to which they are entitled.

Conclusion

The landlord is entitled to retain the security deposit of \$750.00 and the pet damage deposit of \$750.00 for this tenancy.

The balance of the landlord's application has been withdrawn.

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: August 1, 2017

Residential Tenancy Branch