



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, for liquidated damages, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlords said they served the Tenants with their Application and Notice of Hearing (the "hearing package") by registered mail on May 11, 2010 to a forwarding address provided by the Tenants on the Move Out Condition Inspection Report. The Landlords said the hearing package(s) was returned to them unclaimed. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if the recipient refuses to pick up the mail. Based on the evidence of the Landlords, I find that the Tenants were served with the Landlords' hearing package(s) as required by s. 89 of the Act and the hearing proceeded in the Tenants' absence.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
2. Are the Landlords entitled to liquidated damages?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2010 and was to expire on August 31, 2010 however it ended on April 27, 2010 when the Tenants moved out. Rent was \$1,050.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$575.00 at the beginning of the tenancy.

The Landlords said the Tenants gave them written notice on March 30, 2010 that they would be ending the tenancy at the end of April 2010. The Landlords said they tried to re-rent the rental unit as soon as they got the Tenants' notice by advertising the rental unit in the local newspaper and online publications. The Landlords said they were unable to re-rent the rental unit until June 1, 2010. Consequently, the Landlords sought to recover a loss of rental income for May, 2010. The Landlords also sought to recover a late rent payment fee of \$25.00 for May and liquidated damages of \$250.00 pursuant to terms of the Parties' tenancy agreement.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he or she incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the Tenants were not entitled to end the tenancy earlier than August 31, 2010 and as a result, they are liable for a loss of rental income incurred by the Landlords. I also find that the Landlords took reasonable steps to re-rent the rental unit as soon as possible. Consequently, I find that the Landlords are entitled to recover a loss of rental income for May 2010 in the amount of \$1,050.00.

The Parties' tenancy agreement also contains a "liquidated damages" clause in which the Tenants agreed to pay \$250.00 if they ended the tenancy early. This clause provides that the amount is to reimburse the Landlords for their expenses of re-renting the rental unit and is in addition to other amounts such as unpaid rent, for example. RTB Policy Guideline #4 states that a liquidated damages clause in a tenancy agreement is enforceable if it is not a penalty but instead a "genuine pre-estimate" of the losses a landlord will incur if the tenant ends the tenancy early. In this case, I find that the liquidated damages clause in the Parties' tenancy agreement is a genuine pre-estimate of the Landlords' advertising expenses (for one) and is therefore enforceable.

However, I find that the Landlords are not entitled to recover a late rent payment fee for May, 2010 given that the tenancy ended on April 25, 2010. Consequently, this part of the Landlords' claim is dismissed without leave to reapply. As the Landlords have been successful on their claim, they are entitled pursuant to s. 72 of the Act to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenants' security deposit in partial payment of their monetary award. The Landlords will receive a Monetary Order for the balance owing as follows:

Loss of rental income:	\$1,050.00
Liquidated Damages:	\$250.00
Filing Fee:	<u>\$50.00</u>
Subtotal:	\$1,350.00
Less: Security Deposit:	<u>(\$575.00)</u>
Balance Owing:	\$775.00



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Conclusion

A Monetary Order in the amount of **\$775.00** has been issued to the Landlords and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: September 20, 2010.

Dispute Resolution Officer