



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application for Dispute Resolution, seeking authority to retain the tenant's security deposit and recovery of the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on or about September 20, 2011, the tenant did not appear. The landlord provided a copy of the registered mail receipt, testified that the mail was sent to the forwarding address provided by the tenant and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

The landlord's agent gave affirmed testimony, was provided the opportunity to present her evidence orally and in documentary form prior to the hearing, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the tenant breached the Act or tenancy agreement, entitling the landlord to an Order for monetary relief?

Background and Evidence

The testimony and evidence show that the one year, fixed term tenancy began on April 1, 2011, ended on August 31, 2011, when the tenant vacated the rental unit early, monthly rent was \$1,100.00 and the tenant paid a security deposit of \$550.00 at the start of the tenancy.

The landlord provided evidence and gave affirmed testimony that the tenant signed a tenancy agreement accepting liquidated damages of \$550.00 if the tenancy ended early.

The landlord's agent stated that the rental unit was successfully re-rented and that they are seeking to retain the security deposit in satisfaction of the liquidated damages portion of the tenancy agreement.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant ended the Tenancy Agreement early in contravention of section 45 of the Act.

RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the tenant. I find the liquidated damages clause in this instance **is enforceable**.

I find that the landlord has established a total **monetary claim** of **\$600.00**, comprised of liquidated damages in the amount of \$550.00 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$550.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act for the balance due of \$50.00.

I am enclosing a monetary order for **\$50.00** with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenant fail to comply with this monetary order.

Conclusion

The landlord has established a monetary claim of \$600.00, may keep the security deposit in partial satisfaction of the claim and is granted a monetary order in the amount of \$50.00 for the balance due.

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 02, 2011.

Residential Tenancy Branch