



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Tenant on October 04, 2011. 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.

The Landlord submitted documents to the Residential Tenancy Branch. He stated that copies of these documents were sent to the Tenant's place of employment by registered mail on December 10, 2011 and that they were delivered on December 12, 2011. He submitted no evidence to show that the Tenant actually received these documents. I find that I am unable to consider the documents submitted as evidence, as the *Act* does not authorize a landlord to serve evidence by mailing it to their place of employment and I have no reason to conclude that this evidence was received by the Tenant. The Landlord was given the opportunity to provide oral testimony regarding the documents submitted in evidence.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is to a monetary Order for unpaid rent, for loss of revenue, for NSF fees, for liquidated damages, and for cost of filing this Application for Dispute Resolution, pursuant to sections 67 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that the parties entered into a fixed term tenancy agreement and that the fixed term began on August 15, 2011 and continued until September 01, 2012.

He stated that the tenancy agreement required the Tenant to pay monthly rent of \$1,850.00 by the first day of each month.

The Landlord stated that he drove by the rental unit on August 21, 2011 at which time he observed a moving van at the house; that he asked the Tenant if she was moving out; that she refused to explain what was happening; and that she ordered him off the property. He stated that he returned to the rental unit on August 22, 2011 or August 23, 2011 and determined that the rental unit had been vacated.

The Landlord stated that the Tenant gave him a cheque, in the amount of \$925.00, for rent for the latter portion of August, which was subsequently returned to him due to insufficient funds. He is seeking compensation for unpaid rent from August, in the amount of \$925.00.

The Landlord stated that he advertised the rental unit on a popular website on August 22, 2011 and he was able to find a new tenant for September 15, 2011. He is seeking compensation for the revenue he lost between September 01, 2011 and September 14, 2011, in the amount of \$925.00.

The Landlord stated there is an addendum to the tenancy agreement that requires the Tenant to pay \$25.00 if one of her cheques is not honored by her financial institution. The Landlord is seeking compensation for the rent cheque from August that was returned due to insufficient funds and for the cheque the Tenant tendered as a security deposit in August of 2011, which he stated was also returned due to insufficient funds.

The Landlord stated that he was charged \$7.00 for each of the aforementioned NSF cheques, for which he is seeking compensation.

The Landlord is claiming compensation for liquidated damages, in the amount of \$1,850.00. He stated that the addendum to the tenancy agreement specifies that the Tenant will be responsible for liquidated damages in the amount that is equivalent to one month's rent plus administrative costs and advertising costs to re-rent the rental unit. He stated that he determined the amount of the liquidated damages after being advised by someone at the Residential Tenancy Branch that he could not charge more than the equivalent of one month's rent. He was unable to outline the losses he anticipated when he included this term in the agreement.

Analysis

Based on the testimony provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a fixed term tenancy agreement; that the fixed term of the tenancy agreement began on August 15, 2011 and ended on September 01, 2012; that the agreement required the Tenant to pay monthly rent of \$1,850.00 by the first day of each month; and that the Tenant vacated the rental unit, without notice, sometime prior to August 24, 2011.

Based on the testimony provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for August of 2011 and that she owes \$925.00 for the latter portion of that month. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$925.00 in outstanding rent to the Landlord.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*. In these circumstances, I find that the Tenant must pay \$925.00 to the Landlord for the loss of revenue that the Landlord experienced in September of 2011.

Based on the testimony provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant tendered two cheques that were returned to the Landlord by the Tenant's financial institution, due to insufficient funds; and that the addendum to the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever one of her cheques is not honoured by her financial institution. I therefore find that the Landlord is entitled to two NSF fees of \$25.00.

Based on the testimony provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord was charged an NSF fee of \$7.00 for each of the aforementioned cheques. Pursuant to section 7(1)(c) of the Residential Tenancy Regulation, I find that the Landlord is entitled to compensation for these charges.

Residential Tenancy Branch policy Guidelines state that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance to the amount of damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the 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. I concur with this guideline.

I find that the liquidated damages clause does not represent a reasonable estimate of the loss the Landlord would likely experience if the tenancy ended early. In reaching this conclusion I was heavily influenced by the fact that the clause required the Tenant to pay \$1,800.00 plus the administrative costs and advertising costs of re-renting the rental unit. Given that this payment was in addition to administrative and advertising costs associated to re-renting the rental unit; that the Landlord has the right to seek compensation for loss of revenue; and that the Landlord was unable to actually specify the losses he anticipated when he included this term in the contract, I find that this clause is not a reasonable estimate of the losses a landlord would likely incur at the end of a tenancy. Typically, a liquidated damages clause includes administrative and advertising costs of re-renting. I find that this term of the contract is unenforceable and I dismiss the Landlord's claim for liquidated damages.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,964.00, which is comprised of \$1,850.00 in unpaid rent/loss of revenue; \$64.00 in NSF fees/charges; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution, and I grant the Landlord a monetary Order for this amount. 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 29, 2011.

Residential Tenancy Branch