



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MND, 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 an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and utilities, a monetary Order for damage to the rental unit; a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

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

The Landlord stated that on October 20, 2012 documents the Landlord wishes to rely upon as evidence, including a list of claims that total \$3,139.67, were mailed to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

There is no evidence to show that the Landlord amended the Application for Dispute Resolution to increase the amount of the claim from \$2,761.50. As the Landlord has not amended her Application for Dispute Resolution, I decline to consider any claims for compensation not outlined in find the original Application for Dispute Resolution. In my view providing a list of financial claims that exceed the amount being claimed in the Application for Dispute Resolution does not serve to amend the amount of the original claim. This decision was heavily influenced by the Tenant's statement that he is not willing to respond to the additional items outlined on the list of claims that were mailed to him on October 20, 2012. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for damage to the rental unit.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue, unpaid utilities, and liquidated damages; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on July 14, 2012; that the parties entered into a fixed term tenancy agreement, the fixed term of which was to end on August 31, 2013; that the tenancy agreement required the Tenant to pay monthly rent of \$900.00 by the first day of each month; that the Tenant paid a security deposit of \$450.00; that a condition inspection report was completed at the start and the end of the tenancy; that the tenancy ended on September 28, 2012; and that the Tenant provided the Landlord with a forwarding address on the final condition inspection report.

The Landlord and the Tenant agree that the Tenant did not pay rent for September of 2012. The Landlord is seeking compensation for unpaid rent from September. The Landlord and the Tenant agree that an agent for the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 28, 2012, on September 18, 2012.

The Landlord and the Tenant agree that on September 18, 2012 the Tenant provided the Landlord with written notice of his intent to vacate the rental unit on September 25, 2012. The Tenant stated that he opted to end the tenancy because the tenants living above him were partying on a regular basis and were taking his mail.

The Tenant stated that she began advertising the rental unit on several popular internet sites on September 18, 2012 and that she was able to find a new tenant for October 16, 2012. She is seeking compensation for lost revenue for the period between October 01, 2012 and October 15, 2012, in the amount of \$450.00.

The Landlord and the Tenant agree that the tenancy agreement requires the Tenant to pay liquidated damages of \$900.00 if the tenant ends the tenancy before the end of the fixed term of the tenancy agreement. The tenancy agreement specifies these "liquidated damages" are not a penalty and that they cover the landlord's costs of re-renting the rental unit. The Landlord stated that the liquidated damages represent the time she and her agents could reasonably expect to spend finding a new tenant. She was unable to estimate the time she typically spends finding new tenants and stated that she generally establishes the amount of liquidated damages at the equivalent of one month's rent.

The Landlord and the Tenant agree that the Tenant was required to pay 25% of hydro and water bills. The Landlord submitted a hydro bill, in the amount of \$643.55. The Landlord and the Tenant agree that the Tenant owes \$36.40 of this bill.

The Landlord submitted a water bill from a period prior to the start of the tenancy and attempted to use this bill to estimate the amount the Tenant owes for water for the period of his tenancy. The Landlord stated that she has not yet received the water bill for the period relating to this tenancy. The Tenant stated that he does not owe any portion of the water bill submitted in evidence and he does not wish to estimate the amount of water he owes, without viewing a bill that correlates to the tenancy.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on August 31, 2013.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$900.00 by the first day of each month and that the Tenant has not paid the rent that was due on September 01, 2012. As he is required to pay rent when it is due whether or not the landlord complies with the *Act*, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$900.00 in outstanding rent to the Landlord.

I find that the Tenant fundamentally breached the tenancy agreement when he did not pay rent when it was due. I find that the Landlord took reasonable steps to mitigate any lost revenue that arose from the Tenant's failure to pay rent when she advertised the rental unit as soon as she served him with a Notice to End Tenancy and she was able to secure a new tenant for October 16, 2012. In spite of her efforts, the Landlord did suffer a loss of revenue for the period between October 01, 2012 and October 15, 2012, which she would not have experienced if the Tenant paid rent when it was due on September 01, 2012 and the Tenant complied with his obligations to remain in the rental unit until August 31, 2013. I therefore find that the Tenant must pay the Landlord \$450.00 for the loss of revenue experienced between October 01, 2012 and October 15, 2012.

In determining this matter I have placed no weight on the Tenant's argument that the tenants living above him interfered with his right to the quiet enjoyment of his rental unit. In the event that the Tenant believed that the Landlord was not complying with her obligations under the *Act* or the tenancy agreement, the appropriate response would have been to file an Application for Dispute Resolution in an attempt to remedy any breaches. The Tenant did not have the right to prematurely end the tenancy because he was not satisfied with the conditions of his tenancy.

On the basis of the undisputed evidence presented at the hearing, I find that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$900.00 to the Landlord if he prematurely end this fixed term tenancy. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of an early end to the tenancy.

The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that Landlord has submitted insufficient evidence to establish that \$900.00 is a reasonable estimate of the costs of re-renting the rental unit. In reaching this conclusion I was heavily influenced by the Landlord's inability to estimate the amount of time that would typically be spent re-renting the rental unit. Without some estimate of the time it would take to secure a new tenant, I cannot conclude that the \$900.00 was a genuine pre-estimate of a loss. I was further influenced by the Landlord's statement that she typically charges the equivalent on one month's rent. In my view, the amount of rent is not relevant to the costs of re-renting and does not serve to establish an estimate of the costs of re-renting. As the Landlord has failed to establish that the liquidated damages is a genuine pre-estimate of the cost of re-renting the rental unit, I find that it serves as a penalty for ending the tenancy prematurely and I therefore find that this term of the tenancy agreement is not enforceable. On this basis, I dismiss the Landlord's claim for liquidated damages.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant owes \$36.40 of the hydro bill submitted in evidence. I find that the Landlord has not submitted a bill to show the water charges that were incurred during the tenancy. In the absence of evidence to show the water charges, I dismiss the Landlord's application for unpaid water charges. I do not find it appropriate to estimate the amount due for water on the basis of a previous bill, as water charges are based on consumption, which fluctuates during the year.

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 \$1,436.40, which is comprised of \$1,350.00 in unpaid rent/lost revenue, \$36.40 in hydro costs, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit of \$450.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$986.40. 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: October 29, 2012.

Residential Tenancy Branch