



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Langara Gardens Holdings Ltd.
and [tenant name suppressed to protect privacy]

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, a monetary Order for money owed or compensation for damage or loss, a monetary Order for damage, 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 hearing the male Agent for the Landlord withdrew the application for an Order of Possession, a monetary Order for damage to the rental unit, and compensation for lost revenue.

The Landlord submitted several documents to the Residential Tenancy Branch. The male Agent for the Landlord stated that the Landlord sent the Application for Dispute Resolution, the Notice of Hearing, a copy of the tenancy agreement and a copy of a document titled "Ending Tenancy Before End of Term" to the Tenant, via registered mail, on February 13, 2013. The Tenant stated that only the Application for Dispute Resolution and the Notice of Hearing were served to her.

As I have no means of determining whether the Agent for the Landlord's testimony or the Tenant's testimony regarding the aforementioned service of documents is accurate, the Landlord was given the opportunity to request an adjournment for the purposes of re-serving the tenancy agreement and a copy of the document titled "Ending Tenancy Before End of Term". The male Agent for the Landlord requested an adjournment and I find it appropriate to adjourn the matter for the purposes of re-serving these documents.

The Tenant submitted documents to the Residential Tenancy Branch on March 07, 2013, copies of which were not served to the Landlord. As the documents were not served to the Landlord, they were not accepted as evidence for these proceedings.

At the hearing on March 07, 2013 the parties were advised that neither party can serve any additional documents in regards to this matter. The only exception to this direction was the documents the Landlord had been permitted to re-serve and evidence that confirms proof of service of those documents.

The male Agent for the Landlord stated that the Landlord sent a copy of the tenancy agreement and a copy of a document titled "Ending Tenancy Before End of Term" to the Tenant, via registered mail, on March 07, 2013. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on March 28, 2013, copies of which were mailed to the Landlord sometime in March. The male Agent for the Landlord acknowledged receipt of these documents on March 28, 2013. As the documents were not served to the Landlord prior to the start of the proceedings, they were not accepted as evidence for these proceedings.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

Is the Landlord is entitled to a monetary Order for unpaid rent and liquidated damages and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2012; that the parties entered into a fixed term tenancy agreement, the fixed term of which was to end on April 30, 2013; that the Tenant was required to pay monthly rent of \$1,950.00 by the first day of each month; that the Tenant paid a security deposit of \$975.00; and that the Tenant has never provided the Landlord with a forwarding address. During the hearing the Tenant stated that the Landlord could mail documents to the rental unit, as she has made arrangements with Canada Post to have her mail forwarded to her new address.

The Landlord and the Tenant agree that no rent has been paid for February of 2013; that the Landlord personally served a Ten Day Notice to End Tenancy for Unpaid Rent to the Tenant, which declared that the Tenant must vacate the rental unit by February 18, 2013; and that the Tenant did vacate the rental unit by February 18, 2013.

The Landlord and the Tenant agree there is a clause in their tenancy agreement that requires the Tenant to pay liquidated damages of \$975.00 if the Tenant breaches the *Act* or a term of the tenancy agreement that causes the Landlord to end the tenancy prior to the end of the fixed term of the tenancy. The clause declares that the liquidated damages are a pre-estimate of the Landlord's cost of re-renting the rental unit. At the hearing the male Agent for the Landlord stated that the costs of re-renting the unit include advertising costs and time spent showing the unit to prospective tenants.

The Tenant stated that she ended the tenancy prematurely as there were a variety of deficiencies with the rental unit. She stated that the most serious deficiency was the patio door. She stated that the rental unit was broken into in September of 2012; that

the thieves gained entry through the sliding patio doors; that the door was not equipped with a lock; that the door was secured with a security bar; that the security bar was damaged when thieves broke into the rental unit; and that the security bar was never repaired.

The male Agent for the Landlord stated that the patio door was inspected after the break in; that the door is equipped with an operational door latch; that the door is equipped with a door pin which operates as a secondary security device; and that the security bar was slightly damaged but is still functional.

The Tenant was not permitted to address lesser deficiencies with the rental unit, as those deficiencies were not relevant to my decision in this matter.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,950.00 by the first day of each month and that has not paid any of the rent that was due on February 01, 2013. As she is required to pay rent when it is due, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$1,950.00 in outstanding rent to the Landlord.

I find that the Tenant fundamentally breached the tenancy agreement and the *Act* when she did not pay rent for February of 2013. I find that the Landlord served the Tenant with a Ten Day Notice to End the Tenancy for Unpaid Rent, which declared the tenancy will end on February 18, 2013; and I find that the tenancy ended on February 18, 2013 on the basis of this Notice.

As the Landlord ended this tenancy as a result of the Tenant's failure to pay rent, I find that the Landlord has the right to enforce the liquidated damages clause in the tenancy agreement. I therefore find that the Tenant must pay the Landlord \$975.00 in liquidated damages, which I find to be a reasonable estimate of the costs of re-renting a rental unit.

In determining this matter I have placed no weight on the argument that the patio door was insecure. Even if I accepted the Tenant's testimony that the security of the patio door was inadequate, I would not find that this was grounds to end a fixed term tenancy. This finding is based on my determination that this alleged deficiency did not render the rental unit uninhabitable. In the event that Tenant believed the door did not provide adequate security, she had the right to file an Application for Dispute Resolution in which she applied for an order requiring the Landlord to repair the door and/or she had the right to repair the door and seek compensation from the Landlord, in accordance with section 33 of the *Act*. There is nothing in the *Act* that authorizes a Tenant to end a tenancy on the basis of deficiencies which can be remedied in this manner.

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

The Landlord has established a monetary claim, in the amount of \$2,975.00, which is comprised of \$1,950.00 in unpaid rent, \$975.00 in liquidated damages, 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, in the amount of \$975.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,000.00. 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: April 09, 2013

Residential Tenancy Branch

