



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TARYN COURT APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on March 6, 2013, and the Canada post tracking history indicated the tenant signed for the package on March 12, 2013. The tenant did not appear. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent testified that their evidence package was sent by registered mail and the Canada post tracking history indicated the tenant signed for the package on May 15, 2013. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to monetary compensation for money owed or for damages?
Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on May 1, 2012, and was to expire on April 30, 2013. Rent in the amount of \$1,135.00 was payable on the first of

each month. A security deposit of \$550.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Curtain Cleaning and suite cleaning	\$ 265.00
b.	Remainder of rent in lease	\$ 1,135.00
c.	Liquidation damages	\$ 550.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 2,000.00

At the outset of the hearing the landlord's agent testified that the issue of the curtain and suite cleaning were resolved by the parties. The agent stated the landlord has been compensated by the tenant.

The landlord's agent testified that the tenant gave notice to end the tenancy on January 31, 2013, with a vacancy date of February 28, 2013. The landlord's agent stated this was a breach of the fixed term agreement.

The landlord's agent testified that they immediately began advertising the rental unit on a local popular website and on February 3, 2013, they began showing the unit. The agent stated they showed the unit 27 times and were able to re-rent the unit for April 1, 2013. The landlord seeks to recover loss of revenue for the month of March 2013 in the amount of \$1,135.00.

The landlord's agent testified as a result of the tenant breaching the fixed term agreement they seeks to recover the liquated damages as specified in the tenancy agreement. This is to cover the administrative cost of re-renting the unit. The landlord seeks to recover the amount of \$550.00.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 45 of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,

The evidence of the landlord's agent was that the tenant provided notice to end the tenancy on February 28, 2013. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was April 30, 2013.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for March 2013. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under Section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The evidence of the landlord's agent was that they immediately commenced advertising the rental unit and had 27 showing before they were able to find a new tenant. I find the landlord's agent made reasonable efforts to minimize the loss. Therefore, the landlord is entitled to recover unpaid rent in the amount of **\$1,135.00.**

In this case, the landlord seeks to recover the liquidated damage clause in the tenancy agreement. This is a predetermined amount for the administrative cost of having to re-rent the unit, should the fixed term agreement be breached. As, I have found the tenant breached the tenancy agreement when they ended the tenancy prior to the end of the fixed term agreement, I find the landlord is entitled to recover the amount specified in the tenancy agreement. Therefore, the landlord is entitled to recover the liquidated damages in the amount of **\$550.00**.

I find that the landlord has established a total monetary claim of **\$1,735.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$550.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$1,185.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the the security deposit in partial satisfaction of the claim and the landlord is granted a formal order 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: May 30, 2013

Residential Tenancy Branch