



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkview Towers
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with two related issues. The landlord has applied for a monetary order. The tenant has applied for an order stating that he is not obliged to pay the landlord any additional money. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications, one decision will be rendered.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced February 1 2013. The monthly rent of \$1320.00 was due on the first day of the month. The tenant paid a security deposit of \$660.00. There was a written tenancy agreement. The agreement included a clause that if the tenant ended the tenancy before the end of the term, the tenant could be charged a liquidated damages fee of \$350.00. A move-in inspection was conducted and a move-in condition inspection report completed.

The tenant's business obligations meant that he had to move to Japan. On April 30, 2013 he gave the landlord written notice to end tenancy effective May 30. The tenant paid the May rent.

A move-out inspection was conducted and a move-out condition inspection report was completed on May 11, 2013. On the condition inspection report the tenant agreed to the following charges: painting - \$90.00; cleaning - \$20.00; carpet cleaning - \$100.80; charge back for the unused portion of the cleaning agreement - \$160.00; and liquidated damages - \$350.00; for a total of \$720.80. The tenant agreed that the security deposit could be held by the landlord in partial satisfaction of the charges and paid the landlord the balance of \$60.80 in cash.

The landlord showed the unit several times and was able to re-rent the unit for July 1 at the same rent. They are claiming the June rent and the filing fee from the tenant.

The tenant argues that he has paid the landlord all of the amounts they claimed on the move-out inspection even though he was unhappy with the claims for painting, cleaning and the chargeback for the cleaning; he argued that the amount paid for liquidated damages was more than the actual costs of the landlord; and, finally, he argued that he had paid the landlord enough.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

Policy Guideline 4: Liquidated Damages explains that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the 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. The *Guideline* sets out a number of tests that may be applied to determine if a clause is a penalty clause or a liquidated damages clause. The tenant has already agreed to pay the liquidated damages specified in the tenancy agreement. But even if he had not, after applying the tests set out in the *Guideline* and considering the evidence submitted by the landlord, I would have held that this was a valid liquidated damages clause. The *Guideline* goes on to explain that if a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

Policy Guideline 30: Fixed Term Tenancies explains that a fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined date. During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For a tenant, this means that a tenant may not use the one month notice provisions of the legislation to end the tenancy prior to the end of the fixed term.

As explained in *Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*, a tenant is responsible for the rent until the end of the fixed term or until a new tenant is found for the rental unit, whichever first occurs. The landlord has a legal responsibility

to take all reasonable measures to mitigate the loss, usually by advertising as quickly and widely as possible and by asking for a reasonable rent.

I find that the landlord did mitigate its' damages by finding a new tenant at the same rent within a month. Accordingly, I find that the tenant is responsible for the June rent in the amount of \$1320.00.

Conclusion

I find that the landlord has established a total monetary claim of \$1370.00 comprised of the June rent in the amount of \$1320.00 and the \$50.00 fee paid by the landlord for this application and I grant the landlord an order under section in this amount. If necessary, this order may be filed in the 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: July 15, 2013

Residential Tenancy Branch