



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rancho Management Services BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order. The hearing was conducted by conference call. The landlord's agent, the owner of the rental property and the tenant called in and participated in the hearing.

Issue(s) to be Decided

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

Background and Evidence

The rental unit is a strata title apartment in Burnaby. The tenancy began on November 1, 2012 for a one year term. The monthly rent was \$1,200.00 and the tenant paid a \$600.00 security deposit when the tenancy commenced.

The tenancy agreement contained the following provision:

Liquidated damages: Should the Tenant (1) fail to take possession of the premises or (2) have abandoned or vacated the premises before the expiry of the Tenancy created by his Agreement; there will immediately become payable by the Tenant to the Landlord monies for all costs incurred as liquidated damages and said monies will be invoiced for accordingly. Liquidated damages are charges such as rent lost due to suite vacancy, advertising costs, leasing commissions (\$300 + applicable taxes), administrative costs and any other reasonable costs incurred. The Landlord may request that one month's rent be paid as a deposit for Liquidated damages. Once all Liquidated damages have been incurred, a reconciliation will be done and the excess monies will be refunded or in the event of a shortage on monies, an invoice will be prepared for payment by the tenant. (reproduced as written)

The tenant gave notice in April that she would end the tenancy and move out at the end of April, 2013.

The landlord's agent testified that he succeeded in re-renting the unit commencing June 15, 213 at a monthly rent of \$1,200.00. The landlord claimed that the tenant damaged the walls in the rental unit and did not clean it properly when the tenancy ended. The landlord conducted a condition inspection with the tenant. The landlord submitted photographs of the rental unit that the landlord's agent submitted showed the need for cleaning, including carpet cleaning and painting. The landlord's agent said that the tenant signed the condition inspection report and agreed with its conclusions as to the condition of the rental unit.

The landlord has claimed the following amounts:

• Carpet cleaning and general cleaning	\$315.00
• Painting	\$750.00
• Blind cleaning	\$85.11
• Light bulb replacements	\$21.43
• Lost revenue for May and June:	\$1,800.00
• "Break lease fee"	\$336.00

The tenant testified that she cleaned the carpets before the condition inspection was conducted, but she acknowledged that all the stains might not have been removed. The tenant thought that some of the landlord's charges, particularly the painting charge was excessive. The owner of the rental unit testified that the rental unit was freshly painted before the tenancy began, but the tenant said that it was more like a touch up than a complete re-paint because there were visible variations in the paint where it had been touched up when the tenancy began.

Analysis

The tenant ended the fixed term tenancy before the end of the term on short notice. The landlord re-rented the unit effective June 15th. I find that the landlord acted properly to mitigate its damages and is entitled to recover lost revenue for one and a half months in the amount of \$1,800.00.

The landlord provided receipts for its other expenditures for cleaning, painting and repairs. With one exception I find that the landlord is entitled to recover the amounts claimed. With respect to the painting charge, I accept the tenant's evidence that the rental unit had some paint work done before the tenancy commenced, but that it was not given a full and complete re-paint. I also take into consideration that there will be a certain amount of normal wear and tear during a tenancy, even one of only six months duration. I find that the landlord has obtained some betterment as a result of the painting that was done at the end of this tenancy and I allow her claim for painting in the amount of \$600.00 only, not for the full amount of \$750.00 that was claimed.

The final matter is the landlord's claim for a "break lease fee". In contract law the term "liquidated damages" refers to a genuine pre-estimate of the loss that will be suffered in

the event of a breach of the contract; it is not used to describe some subset of damage that the landlord requires the tenant to pay, in addition to general damages flowing from a breach of the contract. Liquidated damages specified in a contract must be a fixed amount, not as here, an amount to be determined by adding up the landlord's supposed losses as a result of the breach of contract and then adding a fixed amount to that total. The liquidated damage clause in this tenancy agreement refers to a shopping list of items that must first be ascertained and then added up to arrive at a total of the liquidated damages; they include: rent lost, advertising costs, leasing commissions, administrative costs, "and any other reasonable costs incurred". The only specified amount mentioned in the clause is the sum of \$300.00, apparently intended as the landlord's leasing commission. The liquidated damage clause also purports to authorize the landlord to collect an amount equivalent to one month's rent as a liquidated damage deposit, even though such a deposit is unlawful under the provisions of the *Residential Tenancy Act*.

I find that the liquidated damage clause in the tenancy agreement is so poorly drafted that it may not be applied to entitle the landlord to claim an additional amount over and above its proven general damages. A liquidated damage clause is supposed to fix an amount to be paid lieu of proved damages, not in addition to them, so as to avoid the necessity of proving actual damages. I further find that the clause should not be applied because it contains an illegal term authorizing the landlord to collect a deposit not permitted by the *Residential Tenancy Act*.

Conclusion

I have allowed the landlord's claim in the amount of \$2,821.54. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$2,871.54. I order that the landlord retain the \$600.00 security deposit in partial satisfaction of this award and I grant the landlord a monetary order under section 67 for the balance of \$2,271.54. This order may be registered 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: August 16, 2013

Residential Tenancy Branch

