



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 MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the landlord and tenant. The landlord applied to keep all or part of the security or pet damage deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of the application. The tenant applied for the return of all or part of the security or pet damage deposit.

Both the landlord and the tenant served each other a copy of the application and a copy of the Notice of Hearing documents by registered mail. Both parties confirmed receipt of the documents and based on this I am satisfied that these documents were served in accordance with the *Residential Tenancy Act* (the '*Act*').

An agent for the landlord and the tenant appeared for the hearing, both of whom provided affirmed testimony. Both parties also submitted documentary evidence in advance of the hearing. However, the landlord stated that she had not received a CD containing pictures with the tenant's evidence package but confirmed that the evidence package contained a number of pages, some of which were not before me during this hearing. Based on the fact that the tenant had provided an evidence package to me that was incomplete, I am not satisfied that the landlord was served the CD and as a result I did not consider this evidence in this Decision.

The affirmed testimony and the resulting documentary evidence were carefully considered in this Decision.

Issue(s) to be Decided

Was the tenant justified in breaking a fixed term tenancy?

Is the landlord entitled to liquidated damages and the cost of the unreturned mail key?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

Both parties agreed that the tenancy started on July 1, 2013 for a fixed term of one year due to end on June 30, 2014. However, the tenant ultimately left on July 22, 2013. On July 1, 2013 the tenant paid \$800.00 as a security deposit and a \$100.00 deposit for the 18 keys relating to the unit. Rent in the amount of \$1,600.00 was payable by the tenant on or before the first calendar day of each month. The landlord completed a move-in condition inspection report at the start of the tenancy, July 1, 2013, with the tenant which was provided as evidence for the hearing.

The landlord's agent testified that on July 22, 2013, she was visited by a male in her office who she assumed to be the tenant's mover, who then presented her with a letter and an envelope containing a number of keys. However, one of the keys to the mail box was missing. The letter provided to the landlord was from the tenant which stated that the tenant was leaving the rental unit and provided a number of reasons for this.

As a result of the tenant leaving, the landlord's agent testified that she had to replace the missing mail box key and incurred a cost of \$50.00 for the key replacement and for changing of the lock. The landlord provided an invoice which details the \$50.00 charge which the landlord now seeks to recover from the tenant.

In response to the tenant's letter, the landlord stated that she became aware that the tenant was not happy residing in the rental unit on July 3, 2013 when she had complained to the building manager about the cleanliness of the rental suite and about having bars put in the windows.

As a result, on July 4, 2013 the landlord's agent attended the suite and spoke to the tenant, assuring her that the bi-fold doors would be cleaned again and that as promised in the move-in condition inspection, the landlord would have a security bar put onto the bi-fold doors. The landlord's agent testified that the rental unit had been cleaned to a reasonable standard but this was not acceptable to the tenant even though she had not addressed this on the signed move-in condition inspection report.

The landlord's agent testified that as a courtesy, and only as a courtesy, she arranged for the rental suite to be cleaned again. The landlord's agent testified that she sent 3 separate cleaning managers into the rental suite who each performed about 1.5 hours of continuous cleaning which included: cleaning the kitchen cupboards inside and out; the stove was pulled out and cleaned; washing the kitchen floor; cleaning the kitchen counter tops and light fixtures; cleaning the baseboard heaters; cleaning the bedroom blinds; washing the bi-fold doors; and cleaning the bathroom floor and switch plates.

The landlord's agent testified that on July 10, 2013 she again met with the tenant who expressed to her that she was extremely unhappy residing in the unit and that her children were having difficulty adjusting to the new place and that she wanted to move back to her father's place. The landlord's agent sympathized with the tenant but requested that the tenant help in finding a new tenant as she was in a fixed term tenancy; this included taking pictures of her rental suite as the landlord could not do this due to privacy reasons.

The landlord's agent testified that the tenant's letter included the fact that her property from her patio area had been stolen and that there was a lot of noise around the rental unit and that she feared for her safety if she remained in the rental unit. However, the landlord stated that at no time did the tenant mention this to her verbally or in writing.

The landlord's agent pointed to Section 5 of the written tenancy agreement which states that the tenant is responsible for paying \$800.00 as liquidated damages for breaking the fixed term tenancy. The same details were further re-enforced in an addendum to the tenancy agreement as a single page document. This document was signed by both the landlord and tenant on June 21, 2013 and provided as evidence for this hearing. The landlord's agent testified that the tenant was required to sign this addendum because she wanted the tenant to know that she had to pay these costs if she were to break the fixed term tenancy. The landlord's agent testified that the \$800.00 was a genuine estimate to cover the administration costs of re-renting the rental unit, being half of the rent amount payable by the tenant, and now seeks to recover this cost from the tenant. However, the landlord's agent confirmed that whilst the tenant had left on July 22, 2013, they were able to re-rent it for August 1, 2013.

The tenant testified that she had looked at a rental unit within the same building on the second floor and when she decided to accept it, the landlord told her that it was no longer available but that there was a similar one on the ground floor. The tenant testified that she briefly viewed it and signed the tenancy agreement. However, the tenant testified that she experienced a lot of noise being on the ground floor which created disturbance to her and her children. In addition, she had a number of items stolen from her patio area during the time she was there; this also unsettled the tenant's children.

The tenant also testified that the rental unit had not been cleaned to a reasonable standard as there was grime everywhere within the unit, blinds were missing and she had to make do without a light fixture. When questioned about why she had not brought this to the attention of the landlord, the tenant stated that she pointed this out to the building manager but it was not documented and just ignored.

The tenant stated that she had told the building manager about the fact that a propane tank and a Buddha statue had been stolen from her balcony but they failed to do anything about it such as alerting the grounds staff to be more vigilant of this. The tenant testified that the building manager did not listen to her, write down any details of her complaint or care about her concerns. However, the tenant did not address any of these issues with the building manager in writing. The tenant also testified that the landlord had failed to put security bars in the windows to prevent possible break-in to the rental suite. When asked about the fact that the landlord had cleaned the rental suite twice, the tenant testified that it was still not up to a reasonable standard.

The tenant testified that she could not take it anymore and decided to move out giving the landlord a written notice with her forwarding address on July 22, 2013 citing her concerns about the rental unit and how she feared for her safety. The tenant now seeks the return of her security and key deposit totaling \$900.00.

In response to the return of the mail box key, the tenant was unable to provide an explanation as to why the missing key was not provided back to the landlord.

The landlord's agent responded to the tenant's testimony stating that the security bar in the bi-fold door was installed but the building is not permitted to install bars in the windows due to the fire risk. The landlord's agent testified that the blinds had been ordered for the rental suite but drapes had been provided as a temporary solution. The landlord's agent stated that she was not aware of the missing light fixture and that this was not communicated to the landlord by the tenant in any way.

Analysis

Firstly, I find that the landlord made the application within the time limits afforded to the landlord, after the tenant had provided the landlord with a forwarding address in writing.

In analyzing this case, I have focused my analysis on firstly determining whether the tenant had cause to end the fixed term tenancy. Section 45(3) of the *Act* states that a tenant may end a fixed term tenancy if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

The only documentary evidence the tenant provided to support her claim that she had to leave the tenancy was a letter which she issued to the landlord on the day that she left the rental unit, giving no prior written notice of the breach or ending of the tenancy. The tenant testified that she had made attempts to address all of her concerns with the

landlord who failed to take her concerns seriously. However, I find that the tenant failed to address these issues with the landlord in writing as required by the *Act* if she wanted to end the tenancy. The landlord acknowledged that the tenant had addressed the lack of cleanliness with her but the landlord was insistent that she did this for the tenant as a courtesy to keep her happy and that it was cleaned again thoroughly. The tenant testified that even though the rental unit had been cleaned again that it was not done to a reasonable standard. In this case, what was a reasonable standard of cleanliness is the landlord's word against the tenants.

In this case, I find that the landlord did clean the unit to a satisfactory standard. This is based on the move-in condition inspection report, which the tenant signed, where the issues of cleanliness that the tenant testified to were not documented. I also base this decision on the fact that the landlord provided an additional cleaning service of more than 3 hours and it is reasonable to expect that within this time the rental unit could have been cleaned to an acceptable standard.

In addition to answering the question regarding the justification of the tenant leaving the rental unit, the tenant did not provide any documentation to support her testimony relating to the fact that her items were stolen from the balcony, that she feared for her safety and that she was being affected by noise disturbance. This testimony is only supported by a letter which the tenant provided to the landlord on the day she was leaving; no evidence was provided by the tenant that these issues were addressed with the landlord in writing and this was confirmed by the landlord's agent's testimony.

Based on this, I find that the landlord did not breach a material term of the tenancy agreement and that the tenant left of her own volition without complying with the requirements of the *Act* in relation to her responsibilities under a fixed term tenancy. As a result, the tenant would be liable for any costs incurred by the landlord to re-rent the property. However, the landlord mitigated any loss and was able to re-rent the property the following month, but now seeks costs associated with the liquidated damages clause which the tenant signed as part of the tenancy agreement and as an additional document which formed part of the addendum.

Policy Guideline 4 defines liquidated damages as "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." The guideline also states that a tenant must pay the stipulated amount even where the actual damages are negligible or non-existent. The tenant signed the tenancy agreement which contained the liquidated damages clause. This was further highlighted to the tenant by the landlord who took the extra step

of re-forcing this clause as part of a separate document in the form of an addendum. The landlord also testified that the amount of the liquidated damages was half of the rent payable by the tenant and was a genuine pre-estimate of the administrative costs associated with re-renting the unit when the tenancy was entered into. Based on the policy guideline, I find that the liquidated damages clause is valid, even though the landlord did not incur any losses and as a result, the tenant is liable to pay to the landlord the \$800.00 as required by the clause.

In relation to the landlord's claim for the \$50.00 related to the missing mail box key, I accept the landlord evidence over the tenant's evidence on a balance of probabilities that the tenant failed to return the missing key and could not provide evidence of continuity for its return. I accept the evidence relating to the costs associated with changing of the mail box lock and I award the landlord the \$50.00 cost to rectify this.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72(2) (b) of the *Act*. Therefore, the total amount payable by the tenant to the landlord is \$900.00.

The tenant failed to provide insufficient evidence to support her application and as a result the tenant's application is dismissed. As the landlord already holds \$900.00 of the tenant's money, I order the landlord to retain this amount in full satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*.

Conclusion

For the reasons set out above, I order the landlord to keep the tenant's \$900.00 in full satisfaction of the landlord's application and I dismiss the tenant's application without leave to re-apply.

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: September 27, 2013

Residential Tenancy Branch

