



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 14, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties present.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Are there other losses or damages and is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy was to start on July 1, 2013 as a fixed term tenancy with an expiry date of June 30, 2014, but the Tenant wrote a letter to the Landlord on May 29, 2013 cancelling the tenancy. Rent was to be \$1,175.00 per month payable in advance of the 1st day of each month. The Tenant said he paid a security deposit of \$587.50 on May 11, 2013 and the Landlord said the security deposit was paid on May 13, 2013.

The Landlord said the Tenant broke the fixed term tenancy agreement by not moving into the rental unit on July 1, 2013 as agreed. The Landlord said the Tenant's letter of May 29, 2013 indicated the rental unit's renovations were not complete and therefore the Tenant was not going to move in. The Landlord said the letter was dated May 29, 2013 and the renovations were completed by July 1, 2013, the start date of the tenancy. The Landlord said the reason the Tenant used to give the Landlord notice that he was

cancelling the tenancy was not reasonable as the rental unit was ready to rent on July 1, 2013.

As well the Landlord said that this was a fixed term tenancy agreement could have been cancelled with no liquidated damage fees, if the cancellation was done within five days of signing the tenancy agreement. The Landlord said the Tenant cancelled the tenancy agreement 18 days after the tenancy agreement was signed; therefore the liquidated damages clause in the tenancy agreement was in effect.

The Tenant said he initialled the tenancy agreement beside the liquidated damages clause and the Tenant said he understood what the clause meant. The liquidated damages clause says that if a tenant breaks the tenancy agreement prior to the end of the tenancy the tenant is responsible to pay the Landlord the amount of \$587.50. The Landlord continued to say the liquidated damages of \$587.50 are not a penalty, but represent costs to re-rent the unit. These costs include the Landlord's time to show the property and the costs associated with a rental agent that the Landlord uses. The Landlord said they go through the tenancy agreement with each new tenant and give them a pink carbon copy of the tenancy agreement and application to rent when the tenants sign those documents.

The Tenant said he did not get a copy of the application to rent and tenancy agreement until May 29, 2013 so he did not know about the 5 day time limit to cancel the tenancy agreement. The Tenant said if he did know the time limits he would have cancelled the agreement earlier. The Tenant said he gave the Landlord more than 30 days notice in his letter of May 29, 2013 so the Landlord had plenty of time to re-rent the unit. The Tenant said he did understand that the 30 day Notice that he gave the Landlord was for a periodic or month to month tenancy and his tenancy was a fixed term tenancy with an expiry date of June 30, 2014. The Tenant said he thinks the contract that the Landlord is using is unfair and he does not feel he is responsible for any damages or liquidated damages as he did not live in the rental unit.

Analysis

Section 16 of the Act says: The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Both parties agreed that they entered into the tenancy agreement on May 11, 2013 and the Tenant said he paid the security deposit on May 11, 2013 and the Landlord said the security deposit was paid on May 13, 2013. Consequently, I find the tenancy agreement dated May 11, 2013 is valid and in effect. As well I find both parties are bound by the agreement and the clauses in the agreement are binding including the liquidated damages clause.

Policy guideline #4 says: 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. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

As the Tenant said he understood the liquidated damages clause and the Tenant initialed beside the liquidated damages clause I find the Tenant was fully aware of the consequences of breaking the tenancy agreement. As well I accept the Landlord's pre-estimation of the amount of the liquidated damages in the amount of \$587.50 which represents the costs to re-rent the unit and hire a rental agent. I find for the Landlord and award the Landlord \$587.50 in liquidated damages.

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 this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in payment of the liquidated damages. The Landlord will receive a monetary order for the balance owing as following:

	Liquidated damages:	\$ 587.50
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 637.50
Less:	Security Deposit	\$ 587.50
	Subtotal:	\$ 587.50
	Balance Owing	\$ 50.00

Conclusion

A Monetary Order in the amount of \$50.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 18, 2013

Residential Tenancy Branch

