



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution. It is readily apparent from the details of the dispute that the Landlord is actually seeking a monetary Order for money owed or compensation for damage or loss, and the Application for Dispute Resolution was amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, on July 15, 2013. The Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

The Agent for the Landlord stated that the amended Application for Dispute Resolution and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, on October 02, 2013. The Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for lost revenue/ liquidated damages and to keep all or part of the security deposit?

Background and Evidence:

The Landlord and the Tenant agree that the Tenant entered into a fixed term tenancy agreement for the rental unit, which began on November 01, 2012, the fixed term of which ended on October 31, 2013. The parties agree that the tenancy agreement

required the Tenant to pay monthly rent of \$1,500.00 by the first day of each month; that the Tenant paid a \$750.00 security deposit; that the Tenant paid another \$25.00 deposit, which the Agent for the Landlord believes was for a remote control for the garage door; that on May 13, 2013 the Tenant provided the Landlord with written notice of his intent to vacate the rental unit by June 30, 2013; and that the Tenant did vacate the rental unit by June 30, 2013. A copy of the tenancy agreement was submitted in evidence.

The Landlord is seeking liquidated damages of \$805.33 due to the early end of the tenancy. The tenancy agreement specifies that the Tenant must pay this amount if the Tenant ends the tenancy before the end of the fixed term of their agreement and the Tenant initialed this clause in the tenancy agreement. The Tenant does not dispute this portion of the Landlord's claim.

The Agent for the Landlord stated that the rental unit was advertised; that a new tenant was located for August of 2013; and that the unit was rented for reduced rent of \$1,450.00 in order to secure a tenant. The Landlord is seeking compensation of \$1,500.00 for the month of July, as no rent was collected for that month, \$50.00 for the month of August, \$50.00 for the month of September, and \$50.00 for the month of October, as they collected less rent in those three months than they would have collected if this tenancy did not end prematurely.

The Tenant stated that he ended this tenancy because he purchased a new home; that the possession date of the home was originally October of 2013; that the female building manager told him that he could end his tenancy by simply providing one month's written notice; that upon learning that he could end his tenancy with only one month's notice he changed the possession date of his home; that he would not have ended the tenancy prematurely if he had not been told that he could end it with one month's notice; that when the condition inspection report was completed at the end of the tenancy the male building manager insisted that he would have to pay rent as a result of the premature end of the fixed term tenancy agreement; and that when the condition inspection report was completed at the end of the tenancy the female building manager argued that he did not have to pay rent as a result of the premature end of the agreement.

The Agent for the Landlord stated that the female building manager has been employed by the Landlord for 9-10 years and that he has never known her to tell a tenant that a fixed term tenancy can be ended with one month's notice.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a fixed term tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,500.00 by the first day of each month and that the fixed term of the tenancy agreement did not end until October 31, 2013.

I find that the Tenant did not comply with section 45(2) of the *Residential Tenancy Act* (Act) when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the Act, pursuant to section 67 of the Act.

In these circumstances, I find that the Tenant must pay \$1,500.00 to the Landlord for the loss of revenue that the Landlord experienced in July of 2013; \$50.00 for the loss of revenue the Landlord experienced in August of 2013; \$50.00 for the loss of revenue the Landlord experienced in September of 2013; and \$50.00 for the loss of revenue the Landlord experienced in October of 2013.

In determining that the Tenant is obligated to pay compensation for lost revenue I was guided, in part, by section 14(2) of the Act, which stipulates that a term of a tenancy agreement can only be amended or removed if both the landlord and the tenant agree to the amendment. In these circumstances, I find that the Tenant has submitted insufficient evidence to show that an agent for the Landlord agreed to amend the fixed term of the tenancy.

In determining that there is insufficient evidence to show that an agent for the Landlord agreed to this amendment, I was heavily influenced by the fact that there is no written record of this agreement. While I accept that the Tenant strongly believes that he was informed that he could end this fixed term tenancy agreement with one month's notice, I note that English is not the Tenant's first language and he had some difficulty understanding some of the things explained during the hearing. As a result of this language barrier, I find it possible that he may have misinterpreted the information provided to him by the female building manager.

I also find it possible that the Tenant simply asked the female building manager what type of notice a tenant had to provide to end a tenancy, without informing her that he had a fixed term tenancy agreement, in which case he would have been informed that one month's notice was sufficient. Without concrete evidence that the female building manager was withdrawing the fixed term of the tenancy agreement, I find that both parties were obligated to comply with the written terms of their agreement.

In determining that there is insufficient evidence to show that the female building manager agreed to this amendment, I was also influenced by the fact that this term in the tenancy agreement greatly benefits the Landlord and I find it unlikely that an experienced agent for the Landlord would agree to amend this term of an agreement.

On the basis of the undisputed evidence, I find that there is a liquidated damages clause in the tenancy agreement that requires the Tenant to pay \$805.33 to the Landlord if the Tenant prematurely ends this fixed term tenancy. 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 of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$805.33 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances. As the Tenant ended this tenancy prior to the end of the fixed term of the tenancy agreement, I find that the Tenant must pay liquidated damages of \$805.33.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,505.33, which is comprised of \$1,650.00 for loss of revenue, \$805.33 for liquidated damages, and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the deposits of \$775.00 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,730.33. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: October 16, 2013

Residential Tenancy Branch

