



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This review hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on June 11, 2013 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on November 22, 2013 for:

1. An Order for return of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.
3. Other.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the tenancy the Landlord requested an amendment to include a claim for liquidated damages. Considering that to amend the application at this point would prejudice the Tenant, I dismiss the Landlord’s request for an amendment.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on December 1, 2012 and ended on April 30, 2012. Rent of \$1,275.00 was payable monthly and at the outset of the tenancy the Landlord collected \$637.50 as a security deposit.

The Landlord states that the Tenant ended a fixed term tenancy set to expire on November 30, 2013 and that although the tenancy agreement also indicates a month to month tenancy, this was an error and that the Tenant fully understood that the tenancy was a fixed term. The tenancy agreement provides for liquidated damages of \$805.33.

The Landlord agrees that on May 2, 2013 the Landlord accepted \$167.83 indicated as the balance owed for the liquidated damage amount. The Landlord states that this occurred under the previous management and there is nothing on record indicating where the previous balance came from and agrees that the previous balance is equivalent to the security deposit. The Landlord states that the amount of liquidated damages is based on financial calculations and is equivalent to the amount the Landlord spends on re-renting the unit. The Landlord states that they are claiming lost rental income of \$2,008.28 in addition to any liquidated damages they received as the liquidated clause provides for this.

The Tenant states that although he understood at the time of signing the tenancy agreement that it was for a fixed term after rereading the tenancy agreement he understood it to also mean a month to month tenancy. The Tenant argues that as there is no clear indication that there was a fixed term the Tenant should not have had to pay the liquidated damages amount. Alternatively, the Tenant argues that the liquidated amount is too large in comparison to the Landlord's actual costs in re-renting and that the amount is a penalty. Finally the Tenant argues that if it is determined that the

tenancy clearly indicates a fixed term then the Landlord's claim for lost rental income has no merit given payment of the liquidated damages and that to pursue the claims against the Tenant is negligent and constitutes harassment. The Tenant states that at the end of the tenancy he agreed that the Landlord could retain the security deposit towards the liquidated damages amount. The Tenant claims return of the liquidated damages amount and return of the security deposit. The Tenant also claims recovery of the \$25.00 filing fee paid for the Tenant's review application that was successful along with recovery of the \$50.00 filing fee for this application.

Analysis

Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Although there is clearly a contradiction in the tenancy agreement in relation to the fixed term, given the Tenant's evidence that it was understood at the signing of the agreement that the term was fixed and considering that the Tenant paid the liquidated damages at the end of the tenancy, I find that there was merely an obvious error in checking off the month to month provision.

The liquidated damages clause provides as follows: "If the tenant ends the fixed term tenancy before the end of the original term . . . the Landlord may treat this agreement as being at an end. In such event, the sum of \$805.33 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages cover the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant such as unpaid rent or for damage to the rental unit or residential property." Given the Landlord's evidence of costs to re-rent the property, I find that the amount of liquidated damages is not a penalty.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable as damages for that breach. In this case the liquidated damages amount limits or determines in advance the damages flowing from the early

end of the tenancy. Although the liquidated damages clause refers to the costs of re-renting the unit, this description appears only to set out the justification for the amount not being a penalty. The clause further provides that such monies are due to the landlord in addition to other amounts such as unpaid rent or for damage to the property.

I note that these additional amounts flow from different breaches of the tenancy agreement such not paying rent while occupying the unit or not leaving the unit clean and undamaged at the end of a tenancy. These amounts are not damages that flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damage amount. Based on the Landlord's evidence of having received a balance owing for the payment of the liquidated damages immediately after the ends of the tenancy, I find that the Landlord accepted the liquidated damages in full and in doing so chose to accept the end of the tenancy with no further rental amounts are payable as a result of ending the tenancy before the fixed term date. I therefore dismiss the Landlord's application.

As the Landlord's application has been dismissed there is no basis for the Landlord to retain the security deposit and as a result I find that the Tenant is entitled to return of the security deposit of **\$637.50** plus zero interest.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". Although the Tenant claims compensation for negligence or harassment due to the Landlord pursuing a claim for lost rental income, as there is no evidence of the Landlord engaging in a course of repeated baseless applications against the Tenant, I find that the Tenant has not substantiated that the Landlord has been negligent or has harassed the Tenant and I therefore dismiss the claim for compensation.

As the Tenant was successful in its review consideration that led to this hearing, I find that the Tenant is entitled to recovery of that **\$25.00** filing fee. As the Tenant has been

successful with its application, I also find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$712.50**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$712.50**. 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: December 20, 2013

Residential Tenancy Branch

