



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, 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 money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that when he completed the condition inspection report on October 18, 2013 he personally served the Tenant with the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

At the outset of the hearing the Agent for the Landlord withdrew the claim for cleaning the rental unit. During the hearing the Agent for the Landlord indicated that the Landlord was seeking compensation for painting the rental unit. He was advised that this claim could not be considered during these proceedings as the Landlord had not properly notified the Tenant of its intent to claim compensation for painting.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for liquidated damages; and to retain all or part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on January 01, 2013, the fixed term of which ended on December 31, 2013. The Agent for the Landlord stated that the rent of

\$1,675.00 was due by the first day of each month and that a security deposit of \$837.50 was paid. This testimony is corroborated by the tenancy agreement.

The Agent for the Landlord stated that the rent payment for October of 2013 was not honoured by the Tenant's financial institution and that rent was not paid for October.

The Landlord is seeking compensation for lost revenue from November of 2013. The Agent for the Landlord stated the Landlord has received a payment for rent for November of 2013. The Agent for the Landlord stated that the rental unit remains vacant.

The Landlord is seeking compensation of \$914.97 in liquidated damages. In the tenancy agreement the Tenant agreed to pay liquidated damages of \$1,675.00. The Agent for the Landlord stated that the Landlord is only seeking \$914.97 as the Landlord has agreed to absorb 50% of the costs of re-renting the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay the rent that was due on October 01, 2013. As he is required to pay rent when it is due, I find that the Tenant must pay the Landlord \$1,675.00 in unpaid rent from October of 2013.

I find that the Tenant did not comply with section 45(2) of the *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 Landlord is entitled to compensation for lost revenue for the month of November, as per the claim made by the Landlord. As the Landlord has received a payment for rent for November, I find that further compensation for November is not warranted.

I note that the Landlord did not claim compensation for lost revenue from December of 2013 and that matter has, therefore, not been considered.

I find that there is a liquidated damages clause in the tenancy agreement which requires the Tenant to pay \$1,675.00 to the Landlord if the Tenant prematurely ends this fixed term tenancy. A liquidated damages clause is a term of a tenancy agreement where the parties agree in advance to 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 \$1,675.00 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.

I find that the Landlord is entitled to liquidated damages of \$1,675.00. As the Landlord has only opted to claim liquidated damages of \$914.97, I find that the Tenant must pay this amount.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,639.97, which is comprised of \$1,675.00 in unpaid rent, \$914.97 in liquidated damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit of \$837.50 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,802.47. 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: December 02, 2013

Residential Tenancy Branch

