



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNR OPB OPR

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent, administrative fees, and to recoup the RTB filing fee.

The landlord attended the hearing and gave affirmed evidence. The tenant did not attend. The landlord gave evidence that she served the tenant with the Notice of Dispute Resolution hearing and the Landlord's Application for Dispute Resolution by registered mail on December 17, 2013 and also by email. I find that the tenant was properly served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

The landlord provided a copy of a written tenancy agreement and gave evidence that the tenancy started May 1, 2013. It was a fixed term tenancy until March 31, 2014 and the tenant was obligated to pay \$1,050.00 in rent in advance on the first day of the month. The tenant also paid a security deposit of \$525.00.

The landlord gave evidence that the tenant stopped payment on her October 1, 2013 and November 1, 2013 rent cheques. The landlord provided copies of her bank account summaries, issued by her bank, which confirm that cheques for \$1,050.00 that were deposited October 4, 2013 and November 1, 2013 were returned because payment was stopped.

The landlord said she served a Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant by posting the Notice on the tenant's door on November 16, 2013. Section 90 of the Act provides that because the Notice was served by posting it on the tenant's door, the tenant is deemed to have received the Notice three days later on November 19, 2013.

The landlord said she received a text message from the tenant in mid-December to say that the tenant had vacated the rental unit and that she had left the keys with a representative of the landlord. The landlord said that the keys were not in fact returned. The landlord said that her brother and father inspected the rental unit and it was in appropriate condition to be rented to a new tenant. The rental unit has now been advertised for rent, but it had not been rented at the time of the hearing.

The landlord said the tenant was renting the unit for \$1,050.00 but the tenant was only using one parking space. The landlord is now attempting to rent the unit out for \$1,100.00 and this includes two parking spaces.

The landlord seeks the equivalent of three months' rent as damages for the tenant breaking the lease. The tenancy agreement, which was signed by both parties, includes a clause that reads:

6. In any event of a breach of this contract regarding the agreement term#1 (duration), the Tenant agrees to compensate the Landlord with the amount equal to THREE (3) month's rent at documented rate for a breach of contract agreement.

The landlord was asked for the reason this clause was included in the tenancy agreement. The landlord said that it was "to be on the safe side" in case it took that long to get a new tenant. Asked if there was any reason why it might take a long time to re-rent the rental unit, the landlord said there was not.

The landlord said the strata corporation has charged her \$100.00 as a move-out fee for the tenant's move-out, and she wishes to add that charge to her monetary claim.

Analysis

Since the tenant has moved out, the landlord no longer needs an order of possession and that claim is dismissed.

I accept the landlord's undisputed evidence that the tenant did not pay rent for October, November, and December 2013 and moved out of the rental unit at some point in December 2013. The landlord is entitled to a monetary order for \$3,150.00 for unpaid rent for October, November, and December 2013. The landlord is also entitled to \$100.00 to recover the move-out fee charged to her by the strata corporation for the tenant's move-out.

At issue is whether the landlord is entitled to the equivalent of three months' rent as liquidated damages to compensate the landlord for the fact that tenant moved out three months in advance of the end of the 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 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 this case, the landlord has indicated that the rental unit is now being advertised for rent and there is no reason why it would take a long time to re-rent the rental unit. Given that evidence, I find the amount specified as liquidated damages to be extreme as it represents three months' rent. I find that the liquidated damages amount is a penalty rather than a genuine pre-estimate of loss and for that reason I find the clause to be unenforceable. I dismiss the claim for liquidated damages.

The landlord is also entitled to recover the RTB filing fee of \$50.00.

The landlord is therefore entitled to the following monetary order:

Rent (October, November, December 2013)	3,150.00
Move-out Fee	100.00
RTB Filing Fee	<u>50.00</u>
Total:	3,300.00

The landlord is entitled to retain the security deposit of \$525.00 in partial satisfaction of the claim. I therefore grant the landlord an order under Section 67 for the balance due of \$2,775.00. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order of \$2,775.00. The landlord is also entitled to retain the security deposit. The landlord's claim for an order of possession is dismissed.

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: January 23, 2014

Residential Tenancy Branch