



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to an application by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties and / or their agents attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy was from September 15, 2013 to August 31, 2014. Monthly rent of \$1,350.00 was due and payable in advance on the first day of each month, and a security deposit of \$675.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

By letter dated November 29, 2013 the tenant gave notice to end tenancy effective December 31, 2013. The tenant's agent testified that a main reason for ending the tenancy was the tenant's experience of the unit as too hot. The landlord's agent testified that no such concern was formally addressed to the landlord by this tenant and, his recollection is that building-wide problems with the heat were rectified sometime in October or November 2013.

A move-out condition inspection was completed in the presence of both parties on December 31, 2013, however, the tenant declined to sign the report. By letter dated January 07, 2014 the tenant informed the landlord of her forwarding address in writing.

The landlord's application for dispute resolution was filed on January 08, 2014. Subsequently, the landlord amended the application which had the effect of reducing the amount of compensation originally sought.

The landlord's agent testified that certain renovations in the unit were undertaken in February 2014, and that new renters were found effective from March 1, 2014.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the landlord's claim and my findings around each are set out below.

\$1,350.00: loss of rental income for January 2014

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the tenant's manner of ending the fixed term tenancy does not comply with the above statutory provisions. However, I also find that documentary evidence submitted by the landlord in relation to mitigating the loss of rental income by advertising for new renters for this unit is insufficiently conclusive. Further, I note the renovations undertaken in the unit prior to new renters being found. In the result, I find that the landlord has established entitlement limited to **\$675.00**, or ½ month's rent.

\$40.00: *(2 x \$20.00) fees assessed for late payment of rent - October & November 2013*

I find that a provision for the assessment of fees in the event of late payment of rent is included in the written tenancy agreement.

There was conflicting testimony concerning whether rent was paid late for the 2 months in question. Based principally on the documentary "resident ledger" evidence submitted by the landlord, I find on a balance of probabilities that the landlord has established entitlement to the full amount claimed.

\$300.00: *liquidated damages*

Residential Tenancy Policy Guideline # 4 addresses "Liquidated Damages," and provides in part as follows:

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.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

I note that a liquidated damages clause is included in the written tenancy agreement at 3.(a)(i), which addresses "administration costs" in the event the tenant ends the tenancy prior to the end of the fixed term. I find that this liquidated damages clause is valid, and

that as the tenant ended the tenancy prior to the end of the fixed term, the landlord has established entitlement to the full amount claimed.

\$50.00: filing fee

As the landlord has achieved a measure of success with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Total entitlement: \$1,065.00

I order that the landlord retain the security deposit of \$675.00, and I grant the landlord a monetary order for the balance owed of \$390.00 (\$1,065.00 - \$675.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$390.00**. Should it be necessary, this order may be served on the tenant, 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: March 19, 2014

Residential Tenancy Branch

