



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ReMax Kelowna Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. This matter commenced on January 22, 2014 but we were unable to complete the matter in the time allotted. The matter was adjourned due to the tenants not having possession of some of the documents the landlord had submitted. The landlord had met the requirement of service as prescribed by the Act but to ensure complete answer and defence for the tenants the matter was adjourned to today's date. Both parties were given full opportunity to provide testimony, make an argument, and be heard.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The relationship between these two parties is an acrimonious one. The level of anger and hostility was apparent throughout the hearing. At times the parties were more interested in arguing with each other than providing their version of the events. The tenants were particularly upset that the company or its agents have not provided an apology for what they had endured.

The tenancy began on June 1, 2013 and ended on September 30, 2013. The parties signed a fixed term tenancy agreement that was to expire on May 31, 2015. The tenants were obligated to pay \$2400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1200.00 security deposit.

As the landlord is the sole applicant in this matter I address each of his claims and my findings as follows:

First Claim – The landlord is seeking \$101.71 for the replacement of a light fixture that he alleges the tenants damaged. The tenants did not dispute that they damaged the fixture but feel the amount is excessive since the home is forty years old. Based on the tenant's acknowledgement and the receipt submitted by the landlord I find that the landlord is entitled to \$101.71.

Second Claim – The landlord is seeking \$194.01 for cut down grass and weeds along path and along driveway. The landlord stated that the tenancy agreement reflects that the tenants must keep this area clean and maintained. The tenants dispute that claim. The landlord supplied an addendum to the tenancy agreement that reflects his claim and that document was signed by both tenants. Based on the signed agreement and the receipt submitted by the landlord I find that the landlord is entitled to \$194.01.

Third Claim- The landlord is seeking \$26.67 for hydro costs for October 1- October 14, 2013. The landlord stated that the tenants "broke the lease" early and should be responsible for those costs. The landlord stated that he was able to rent the unit for October 15, 2013. The tenants dispute this claim. The Act does not prescribe for the recovery of these costs when a landlord has vacant possession. The tenants are not responsible for this cost and I therefore dismiss this portion of the landlords' application.

Fourth Claim- The landlord is seeking \$1200.00 for loss of revenue for October 1-14 and \$625.00 for liquidated damages. The landlord stated that the unit remained empty until October 15, 2013. The landlord stated that the tenant signed a two year "lease" and broke it. The landlord stated that the same agreement has a liquidated damages clause that the tenants agreed to and signed for.

The tenants adamantly dispute this claim. The tenants stated that the landlord had misrepresented this property. The tenant stated that the neighbors had parties multiple times in the first month that the subject tenants resided in the home. The tenants stated that they were the subjects of threats and abuse. The female tenant stated that she was threatened with rape by one of the neighbors during one of their "drunken parties". The tenants stated that there were many young men running around in their underwear drunk and causing a disturbance at all hours of the night on many occasions.

The tenants stated that they had brought this to the attention of the property manager who stated "grounds to break the lease I guess". The tenants stated that they didn't understand why this hearing was taking place as they felt they had an agreement with

the landlord that they would be entitled to move out without penalty after enduring this situation.

I fully accept that the tenants were subject to the abuse of the neighbors and their parties but I do not accept the tenants' version of events that the landlord misrepresented the property. The landlord could not have reasonably known what the actions of the neighbors were going to be. The landlord manages the subject property and not the neighbors. The landlord had no control as to the neighbors' behaviour. I do agree with the tenants that the landlords' agreement is somewhat ambiguous and that they should not have to pay both the loss of income and liquidated damages.

The liquidated damages provision in the landlords' agreement provides as follows.

If the tenant ends the fixed term tenancy or is in breach of the Residential Tenancy Act or a material term of this agreement that causes the landlord to end the tenancy before the end of the original term as set out in (b) above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$625.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed upon pre-estimate of the landlords 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.

I find the provision to be poorly worded and unclear. While it clearly states that if the tenant wishes to end the tenancy early, they could pay liquidated damages in which case the landlord had the option of treating the tenancy as being at an end, the second sentence begins "In such event" which could mean "in the event the tenant ends the fixed term early" or "in the event the landlord elects to treat the agreement as being at an end" or both. In this case, the landlord expressly stated that he did not consider the agreement as being at an end but wished to hold the tenant to the strict terms of the contract. However, given the unclear wording of the liquidated damages provision, I find that the provision can easily be construed to mean that upon payment and acceptance of liquidated damages, the agreement is at an end. While this is not the manner in which the landlord wishes to interpret the contract, I find that the rule of *contra proferentum* applies. This is a rule of contractual interpretation which provides that an ambiguous term in a contract is construed against the party that imposed the term, which in this case is the landlord.

I therefore interpret the liquidated damages provision to mean that upon payment and acceptance of liquidated damages, the landlord elected to treat the tenancy agreement

as being at an end. Because the landlord accepted the end of the tenancy as of September 30, 2013, I find that the tenant cannot be held responsible for loss of income beyond the end of the tenancy and accordingly I dismiss the landlord's claim for loss of income for October 1-14, 2013. The landlord is entitled to \$625.00.

As the landlord has been only partially successful in their claim I award \$25.00 of the filing fee to the landlord.

Conclusion

The landlord has established a claim for \$945.72. I order that the landlord retain \$945.72 from the security deposit in full satisfaction of the claim and return the remainder to the tenant in the amount of \$254.28 immediately. I grant the tenants an order under section 67 for the balance due of \$254.28. 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: March 17, 2014

Residential Tenancy Branch

