



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The parties agreed that this tenancy began on August 1, 2010, that it ended on November 30, 2013, monthly rent was \$2215, and the tenant paid a security deposit of \$1000, which has not been returned to the tenant.

The landlord's monetary claim is \$2215, and as stated in the landlord's application, this amount is a rent penalty of one month's rent in the event the tenant broke the lease agreement.

The parties signed a series of 1 year, fixed term tenancy agreements, with the latest one being signed on September 29, 2013, for a tenancy starting August 1, 2013, for a fixed term ending on July 31, 2014. The landlord provided the tenancy agreement into evidence.

The landlord pointed to the latest written tenancy agreement, which stated that if the tenant left between December 1 to March 30, he would pay a penalty of one month's rent.

The landlord submitted that the tenant gave his notice on October 10 that he was vacating and did so vacate on or about November 30. The landlord claimed that he is entitled to receive the amount of one month's rent due to the clause in the tenancy agreement.

In response, the tenant denied owing the landlord the penalty.

Analysis

The landlord is seeking to enforce a penalty clause in the event of a breach of the fixed term tenancy agreement and I find the Act does not allow a penalty for such an event. A party claiming for monetary compensation under the Residential Tenancy Act must prove an actual loss, according to sections 7(1) and 67 of the Act, and that they took reasonable measures to minimize their loss, pursuant to section 7(2) of the Act.

I likewise considered that the handwritten clause calling for a penalty of 1 month's rent in the event the tenant vacated early prior to the end of the fixed term more in the way of a liquidated damages clause.

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of 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. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible.

Due to the above, I find that the clause in the tenancy agreement calling for a penalty is not recognized under the Act and therefore unenforceable.

I therefore dismiss the landlord's application for \$2215, without leave to reapply.

As I have dismissed the landlord's application, I decline to award him recovery of the filing fee.

Further, as I have dismissed the landlord's application claiming against the tenant's security deposit, I order that the landlord return the tenant's security deposit of \$1000, forthwith.

Conclusion

The landlord's application for monetary compensation is dismissed and I have ordered the landlord to return the tenant's security deposit of \$1000.

To ensure compliance, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1000, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement of the monetary order are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: April 14, 2014

Residential Tenancy Branch

