



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ewald Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement and to recover the RTB filing fee.

The landlord attended the teleconference hearing and gave evidence. The tenants did not attend the hearing. The landlord gave evidence that he served the tenants with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on January 8, 2014. I find the tenants were properly served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord provided a copy of the tenancy agreement which was signed by the parties on December 29, 2012. The tenancy agreement indicates the tenants were obligated to pay \$800.00 rent monthly in advance on the first day of the month, and the tenancy was for a fixed term of one year. The tenants also paid a security deposit of \$442.50.

The tenancy agreement contains the following note [the "Monetary Compensation Clause"] under the signature lines:

Consent: If the applicant is not accepted, the full deposit will be refunded. Also there would be curtain [*sic*] monetary compensation for breaking the contract, which equal to half the monthly rent.

The landlord gave evidence that the tenants gave notice verbally on August 15, 2013 and in writing on August 16, 2013 that they would be moving out on September 1, 2013. The tenants told him they needed time to clean and did not finish until September 2, 2013. The tenants provided the landlord with their forwarding address in writing on September 2, 2013.

The landlord gave evidence that he commenced advertising the rental unit on Craigslist on August 15, 2013, seeking the same amount of rent. He was unable to find a suitable new tenant until February 1, 2014.

Asked to identify any factors that may have made it difficult to re-rent the unit, the landlord gave evidence that his company has several buildings and the rental market is generally soft in North Vancouver. Also, the rental unit is on the ground floor which many people do not want, and smoking is prohibited so that limits the pool of potential tenants.

The landlord gave evidence that the rental unit was in acceptable condition to be re-rented once the he had the blinds and stove cleaned. His evidence is that the building is 55 years old and in an excellent area. The landlord provided a receipt for cleaning services in the amount of \$55.00.

The landlord claims a full month's rent of \$885.00 on the basis that the tenants gave late notice, a half month's rent of \$442.50 based on the Monetary Compensation Clause, the cleaning charge of \$55.00 and the RTB filing fee of \$50.00 for a total monetary claim of \$1,432.50.

Analysis

I accept the landlord's evidence that the tenants gave notice in mid-August 2013 that they would vacate the rental unit on September 1, 2013. According to Section 53, where a tenant fails to give proper notice, the tenant's notice is deemed to be effective on the earliest date that complies with the notice provisions set out in Section 45. For that reason, the effective date of the tenants' notice is December 31, 2013 (the end of the fixed term).

I find the landlord met his obligation to mitigate his losses by advertising immediately upon receiving the tenants' notice on August 15, 2013 and by offering the rental unit at no more than the amount of rent it was previously rented for. For that reason, the landlord is entitled to his claim for one month's rent of \$885.00 for the tenants' failure to give proper notice.

The landlord relies on the Monetary Compensation Clause as being a liquidated damages clause to address the breach 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 phrasing of the Monetary Compensation Clause suggests it is a penalty, rather than a genuine pre-estimate of damages. For that reason, I find the clause to be unenforceable and I dismiss the claim for liquidated damages.

The landlord is entitled to recover the cleaning fee of \$55.00 and the RTB filing fee of \$50. The total amount due the landlord is \$885.00 (lost rent), \$55.00 cleaning fee, and \$50.00 RTB filing fee for a total of \$990.00. I order that the landlord retain the security deposit of \$442.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$547.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$547.50. The landlord is also entitled to retain the security deposit.

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: April 03, 2014

Residential Tenancy Branch

