Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 5, 2014, by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party acknowledged receipt of evidence submitted by the other; however, the Landlord argued that the Tenant had submitted her evidence late because he did not receive it until May 21, 2014.

The *Residential Tenancy Branch Rules of Procedure Rule # 3.4 (*herein after referred to as the Rules of Procedure) provides that to the extent possible, the applicant must file copies of all available documents, photographs, video or audio evidence **at the same time** as the application is filed [my emphasis added].

Rule 3.5 and Rule 4.5 of the *Rules of Procedure* provide that all evidence which the applicant and respondent intend to rely upon at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the “Definitions” part of the Rules of Procedure.

If copies of the applicant’s evidence and/or the respondent’s evidence are not received by the Residential Tenancy Branch or served on the other party as required, the arbitrator must apply Rule 11.5 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

Despite all of the evidence being in existence prior to February 5, 2014 (with the exception of the Canada Post mailing receipts), the Landlord did not submit their evidence with their application. Rather, the Landlord delivered 11 pages of evidence (some double sided) on May 16, 2014. An additional two pages of evidence were faxed to the Residential Tenancy Branch later that day on May 16, 2014.

The Landlord noted that he did not receive the Tenant's evidence until May 21, 2014, five calendar days after he submitted his evidence, and argued that it was supposed to be submitted by May 16, 2014. The Landlord confirmed that despite having received the evidence late, he had had the opportunity to review it.

Based on the above, and after consideration that the Landlord had had an opportunity to review the Tenant's evidence, I have accepted and considered all documentary evidence submitted by both the Landlord and the Tenant, in accordance with Rule # 11.5 of the *Residential Tenancy Branch Rules of Procedure.*

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed subsequent written tenancy agreements for fixed term tenancy agreements that commenced on October 1, 2012. The first agreement expired on September 30, 2013 and the subsequent agreement was for the period that began on October 1, 2013 and was not set to expire until March 31, 2014. The Tenant was required to pay rent of $705.00 payable on or before the first of each month and on August 27, 2013 the Tenant paid $352.50 as the security deposit. The move in condition inspection report was completed on October 1, 2013, and the move out condition inspection report was completed on January 22, 2014.

The Landlord submitted evidence that the Tenant contacted them in December 2013 to advise she would be ending her tenancy and requested approval to sublet or sublease her unit. The Landlord pointed to section 16 of the tenancy agreement provided in evidence and argued that he had had discussions with the Tenant where he pointed out the requirements of an assignment or sublet, as written in her tenancy agreement. It was after those discussions that the Tenant chose not to proceed with a sublet and she agreed to submit and sign the written early termination letter.

The Landlord argued that section 5 of the tenancy agreement provides for liquidated damages of $450.00. He stated that they took the time to review this section with the Tenant at the time she signed the agreement. Despite the Tenant recommending a proposed new tenant, the Landlord is seeking to recover the liquidated damages as they made the effort to show the rental unit, check references, and conducted credit checks.

The Tenant testified that she had initially requested to sublet and/or assign her lease but was declined because there were not enough months left in the lease. She said she was told that there had to be at least six months left in the lease to be approved to sublet so she agreed to sign the early termination letter on December 20, 2013. She had agreed on the move out condition inspection form that the Landlord could withhold the carpet cleaning charges from her security deposit. She was not disputing the amount of $73.50 for carpet cleaning as supported by the invoice provided in the Landlord's evidence.

The Tenant disputed the Landlord's claim of $450.00 for liquidated damages. She argued that the Landlord refused to provide an itemized accounting of the charges incurred while re-renting the suite. The Tenant stated that she is of the opinion that the Landlord did not incur a lot of expenses to re-rent the unit because the new tenant is someone she found to rent the unit. She also argued that she is not aware of how many times the Landlord showed her unit as it was shown at times when she was not there.

After a brief discussion the Tenant indicated that she was not previously educated about liquidated damages or how they worked. She argued that the Landlord had offered to possibly reduce the amount charged for liquidated damages but that she was not provided information about what she was being charged for under the liquidated damages.

In closing the Landlord submitted that they had provided ample evidence to support that they communicated tenancy issues with the Tenants in writing. Therefore, if they had offered to reduce the liquidated damages amount, they would have put that in writing, which they did not. Their letters of January 22, 2014 and February 3, 2014, as provided in evidence, clearly indicate their intent to recover the full $450.00 as liquidated damages.

Analysis

I have carefully considered the foregoing, all documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence supports that the Tenant ended her tenancy at the end of January 2014, two months prior to the end of the fixed term. On December 20, 2013 the

Tenant signed an “Early Termination By Tenant” form which provides the following at the fourth paragraph:

> *I/We also understand that your acceptance of this notice does not constitute a waiver of your right to claim liquidated damages from us for early termination of a fixed term tenancy agreement.*

Item # 5 of the tenancy agreement provided for liquidated damages of $450.00 and states it is for “all costs associated with re-renting the rental unit”.

Upon review of the Tenant’s argument that she initially requested to sublet or assign her lease; I find there to be insufficient evidence to prove such a request was denied by the Landlord. That being said, there is no provision in the Act that would require a Landlord to allow a sublet or lease for a two month period.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree, in advance, the damages payable to the Landlord 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.

Notwithstanding the Tenant’s argument that she had referred the new tenant to the Landlord, I accept the Landlord’s testimony that they still incurred costs to show the unit to other prospective tenants, and to conduct credit and reference checks on the new tenant. Accordingly, I find the pre-agreed upon amount of liquidated damages to be a reasonable amount. Accordingly, I grant the Landlord his monetary claim of **$450.00**.

The Landlord has been successful with their application; therefore I award recovery of the **$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants’ security deposit plus interest as follows:

Liquidated Damages	$450.00
Filing Fee	50.00
SUBTOTAL	**$500.00**
LESS: Security Deposit $279.00 ($352.50 – 73.50)	- 279.00
+ Interest 0.00	0.00
Offset amount due to the Landlord	**$221.00**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$221.00.** This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: May 30, 2014

Residential Tenancy Branch