



Dispute Resolution Services

Page: 1

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 MNR, MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent and damage to the unit.

The landlord attended the teleconference hearing and gave evidence, however the tenants did not attend. 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 February 21, 2014. I find the tenants were properly served.

The property owner is represented by a property manager through his firm. Between the time of the Landlord's Application for Dispute Resolution and the hearing, the property manager transferred to a different firm. Accordingly, I have amended the name of the Applicant/Landlord to the new property management firm.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to a monetary order for damage to the unit?

Background and Evidence

The tenancy agreement signed by the parties on April 30, 2013 indicates the tenancy started June 1, 2013 and was a fixed term tenancy ending May 31, 2015. The tenants were obligated to pay rent of \$2,250.00 monthly in advance on the first day of the month. The tenants also paid a security deposit of \$1,125.00 and a pet deposit of \$1,125.00.

The tenancy agreement has an addendum also signed by the parties on April 30, 2013 (the "Addendum") which contains the following term:

- Tenant agrees to forfeit their security deposit should they break their lease. This would mean that the tenant moves out with or without notice, prior to the conclusion of the date indicated on their tenancy agreement. This addendum point would be voided should there be an agreement to end tenancy. (the "Addendum Term")

The landlord gave evidence that the tenants told him on January 6, 2014 that they were going to move out, and they moved out on January 14, 2014. The landlord claims \$1,125.00 on the basis of the Addendum Term, because the tenants moved out before the end of the fixed term. The landlord says that the Addendum Term is intended to be liquidated damages to cover the landlord's costs of finding new tenants. The property management company charges the landlord a flat fee of one half month's rent to find new tenants.

The landlord's evidence is that the tenants were having financial problems and so the landlord agreed the tenants could pay a lower amount of rent temporarily. According to the landlord's Tenant Ledger, the tenants paid \$1,800.00 rent in December 2013 and \$1,800.00 rent in January 2014. The landlord says the arrangement was that the tenants would eventually pay the additional \$450.00 for each of those two months.

The landlord claims \$900.00 unpaid rent for December 2013 and January 2014. The landlord also claims a rental loss of \$2,250.00 for each of February, March, and April 2014 on the basis that the landlord could not find new tenants until May 1, 2014.

The landlord gave evidence that they started to advertise on various rental websites for new tenants in mid-December in attempt to find a possible sublet. The landlord's evidence is that the house is difficult to rent because most renters wish to be in Kelowna rather than Lake Country (about 25 to 30 minutes away). He also said February/March is the worst time of year to be seeking new tenants; they had about six showings during that time. The landlords eventually found new tenants for May 1, 2014 but had to reduce the rent to \$1,900.00 per month.

The landlord also claims the cost of a "patch and paint" repair of \$127.50. The landlord provided a receipt showing \$100.00 for the labour and materials, plus \$27.50 GST.

Analysis

I find the landlord is entitled to unpaid rent of \$900.00 for the months of December 2013 and January 2014, based on the tenancy agreement and the landlord's Tenant Ledger.

I find the landlord is entitled to compensation for lost rental income for the months of February, March, and April 2014 in the amount of \$2,250.00 per month, for a total of \$6,750.00. I find the landlords met their duty to mitigate their losses by advertising the rental unit appropriately and promptly, and by reducing the rent in order to secure new tenants.

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.

The landlord has indicated that the Addendum Term is intended to be a liquidated damages clause. However, the Addendum Term "Tenant agrees to forfeit their security deposit should they break their lease" is phrased as though it were a penalty. I find that a tenant reading such a term would likely understand it to be a penalty and not a genuine pre-estimate of costs. For that reason, I find that the tenants did not agree to a liquidated damages clause and the term is not enforceable. I dismiss the landlord's claim for liquidated damages.

The GST appears to have been wrongly calculated on the "patch and paint" receipt; the GST on \$100.00 should be \$5.00 for a total invoice amount of \$105.00.

The landlords are entitled to compensation of \$7,755.00, comprised of \$900.00 unpaid rent, \$6,750.00 loss of rental income, and \$105.00 repair. The landlord is also entitled to recover their RTB filing fee of \$100.00.

The total amount due the landlord is \$7,855.00. I order that the landlord retain the security deposit of \$1,125.00 and the pet deposit of \$1,125.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5,605.00. 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 \$5,605.00. The landlord may also retain the security deposit and the pet 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: July 11, 2014

Residential Tenancy Branch

