



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kinemacolor Joint Venture
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Landlord's application (filed June 27, 2014): MNDC, MNSD, FF

Tenants' application (filed August 1, 2014): MNSD, MNDC

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit; and for compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served each of the Tenants with its Notice of Hearing by registered mail sent to the Tenants' new address on June 30, 2014. The Landlord sent the Tenants copies of its documentary evidence by registered mail on September 26, 2014. The Landlord provided registered mail receipts and tracking numbers for both packages.

It was also determined that the Tenants served the Landlord with their Notice of Hearing documents and documentary evidence, by registered mail, sent August 1, 2014.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for the cost of re-renting the rental unit?
2. Are the Tenants entitled to a monetary award for double the amount of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on June 15, 2013, for a fixed term ending on June 30, 2014. Monthly rent was \$1,600.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 on May 20, 2013.

On January 8, 2014, the Tenants gave notice to end the tenancy before the end of the term, effective February 28, 2014. The Tenants provided the Landlord with their forwarding address in writing on March 1, 2014.

The rental unit was re-rented for March 1, 2014.

The Tenants made reference to a previous hearing on June 20, 2014, with respect to the Landlord's claim for compensation for damage or loss under the Act, regulation or tenancy agreement; to apply a portion of the security deposit in satisfaction of its monetary award; and recovery of the filing (the "Previous Hearing"). The arbitrator at the Previous Hearing declined to hear the Landlord's Application because the Landlord did not provide sufficient details of his dispute. The arbitrator gave the Landlord leave to re-apply.

The Tenants submitted that they requested return of the security deposit again, immediately after the Previous Hearing concluded. They submitted that they got no response from the Landlord. The Tenants seek compensation pursuant to the provisions of Section 38(6) of the Act in the amount of \$1,600.00.

The Landlord's agent submitted that "the security deposit should be returned after the dispute is settled". He stated that he "applied for the security deposit at his first application and received the Tenant's forwarding address on March 1, 2014".

The Landlord seeks a monetary award in the amount of \$463.75, "to cover the cost of re-renting the suite". The Landlord provided a detailed breakdown for placing/cancelling ads; receiving calls and communicating with prospective tenants; time expended showing the rental unit; attending to signing the new tenancy agreement and performing the move-in condition inspection with the new tenants; and performing the move-out inspection with the Tenants.

The Tenants stated that the Landlord's agent kept changing the amount that he was seeking. They stated that he first asked for liquidated damages; then \$125.00; then \$175.00; then \$472.50; and now \$463.75. The Tenants testified that the Landlord did

little to re-rent the rental unit. They submitted that they found the new tenants as a result of their own advertising efforts.

Analysis

Is the Landlord entitled to a monetary award?

The tenancy agreement includes a clause with respect to liquidated damages: “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 term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$400 as liquidated damages and not as a penalty.

Liquidated damages are an agreed pre-estimate of the landlord’s 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.” [My emphasis added.]

I find that the Tenants ended the fixed term tenancy before the end of the term. I find that the parties agreed to a pre-estimated amount of \$400.00 for the Tenant’s breach of the tenancy agreement. In addition, the Tenants confirmed this agreement when they gave their notice; “Also, [the Landlord’s agent] mentioned when we rented the apartment that the fee for breaking the lease is \$400 as long as the apartment rents”.

Therefore, I find that the Landlord is entitled to the sum of **\$400.00** in liquidated damages. As this is an agreed upon pre-estimate, I find that he is not entitled to more than \$400.00.

Are the Tenants entitled to a monetary award for double the amount of the security deposit?

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant’s consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant’s forwarding address in writing, **a landlord has 15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, the Landlord applied against the security deposit 9 days after receipt of the Tenant's forwarding address. The Landlord also re-applied against the security deposit within days of receiving the Decision for the Previous Hearing. Therefore I find that the Tenants are not entitled to compensation under Section 38(6) of the Act.

Set off of Security Deposit and Recovery of Filing Fees

Pursuant to the provisions of Section 72 of the Act, I hereby set off the Landlord's monetary award against the security deposit and provide the Tenants with a Monetary Order for the balance of the security deposit in the amount of **\$400.00**.

I make no order with respect to recovery of the filing fees.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$400.00**, representing return of the balance of the security deposit after setting off the Landlord's monetary award. This Order may be filed in the Provincial Court 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: November 18, 2014

Residential Tenancy Branch

