



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on July 14, 2014 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant via registered mail. The tenants were served to the forwarding address given during the June 24, 2014 condition inspection.

These documents are deemed to have been served in accordance with section 89 and 90 of the *Act*; however neither tenant appeared at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$350.00 for a lease breaking fee, a NSF fee in the sum of \$25.00 and recovery of a rent incentive in the sum of \$54.00 per month from March to June 2014?

May the landlord retain the security deposit?

Background and Evidence

A copy of the tenancy agreement supplied as evidence indicated that the tenancy commenced on March 1, 2014, for a minimum twelve month term. Rent was \$1,100.00 per month. A security deposit in the sum of \$550.00 was paid. A pet deposit paid has been returned to the tenants.

The tenancy agreement included a term:

"If the tenant terminates the tenancy in less than 12 months, \$350.00 will be charged by the landlord and the tenant will pay this amount as a service charge for tenancy change, over costs, such as advertising, interviewing, administration, re-renting, for this short-term tenancy. This is not a penalty."

The tenants gave notice ending the tenancy and vacated on June 30, 2014. The move-out condition inspection report was completed on June 24, 2014.

The landlord has claimed \$54.00 per month from March to June, 2014 inclusive, as the tenants were paying \$1,100.00 rent; less \$54.00 as an incentive to remain for the 12 month term.

The tenants signed a "Rental Incentive Agreement" on February 28, 2014. A copy of the agreement was supplied as evidence. The agreement indicated that the tenants would receive a \$54.00 rent concession for the term of the lease. If the tenant's broke the lease, the agreement required the tenants to repay the incentive received for each month. The landlord said the tenants received the benefit of the incentive and then terminated the agreement before the end of the fixed term.

The landlord has claimed an NSF fee; no evidence of a NSF cheque was submitted.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the tenancy ended effective June 30, 2014; the date the tenants vacated in breach of section 45 of the Act. There was no evidence before me of a breach of a material term of the tenancy agreement by the landlord.

The landlord applied claiming against the security deposit within fifteen days of the end of the tenancy.

The tenants received a reduced rent, from that indicated payable on the tenancy agreement; as set out in the "Rental Incentive Agreement" signed by the parties.

In the absence of the tenant's, who were served with Notice of this hearing, I find that the landlord is entitled to compensation in the sum of \$216.00 (\$54.00 X4) for March to June, 2014, inclusive. The tenants have not disputed the terms of the "Rental Incentive Agreement."

In relation to the claim for liquidated damages, I have considered Residential Tenancy Branch policy which suggests that liquidated damages must be a genuine pre-estimate of the loss at the time the contract is entered into; otherwise the clause may be found to constitute a penalty and, as a result, be found unenforceable.

The sum can be found to be a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. Policy also suggests that, generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

The landlord has referred to the sum claimed as a service charge. Policy suggests that liquidated damages are 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.

I have considered the term “service charge” as meaning the damages payable should the tenants breach the tenancy agreement. I have found the tenants did breach the Act, by ending the fixed term tenancy agreement early.

I find that a charge in the sum of \$350.00 is not an extravagant amount and that it does not constitute a penalty. It is just over 1/3 the sum of rent owed each month.

Therefore, I find that the landlord is entitled to liquidated damages in the sum of \$350.00.

In the absence of evidence of a NSF cheque I find that the claim for NSF fees is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Therefore, the landlord is entitled to total compensation in the sum of \$616.00.

I find that the landlord is entitled to retain the tenant's security deposit, in the amount of \$550.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$66.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for rent and liquidated damages.

The claim for NSF fees is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: December 04, 2014

Residential Tenancy Branch

