



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The "male tenant" and the "female tenant" did not attend this hearing, which lasted approximately 21 minutes. The landlord's agent SJ ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager for the landlord company named in this application and that she had authority to represent the landlord company as an agent at this hearing.

The landlord testified that she served the tenants with the landlord's application for dispute resolution hearing package ("Application") on December 30, 2014, by way of registered mail. The landlord provided Canada Post receipts and tracking numbers as proof of service, with the landlord's Application. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's Application on January 4, 2015, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on June 1, 2014 for a fixed term of one year to end on May 31, 2015. Monthly rent in the amount of \$2,150.00 was payable on the first day of each month. A security deposit of \$1,075.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement with its Application.

The landlord testified that the tenants vacated the rental unit on December 15, 2014, pursuant to a letter, dated November 15, 2014, and received by the landlord on November 17, 2014. The landlord indicated that a move-in condition inspection and report were completed on May 29, 2014 and a move-out condition inspection and report were completed on December 15, 2014. The landlord provided a copy of both reports, which were signed by both parties, with the landlord's Application. The landlord stated that the tenants' forwarding address was received in writing on December 15, 2014.

The landlord seeks a monetary order of \$2,460.00 plus the recovery of the \$50.00 filing fee for its Application.

The landlord seeks \$10.00 for replacement of a mail key that the tenants did not return at the end of their tenancy. The landlord testified that the female tenant forgot the mail key during the move-out condition inspection on December 15, 2014 and stated that she would return it on December 18, 2014. The \$10.00 cost of this mail key is included on the move-out condition inspection report. The landlord stated that the owners of the rental unit were required to purchase a new mail key at their own expense and that the cost was likely more than the \$10.00 sought for its replacement. The landlord could not recall the exact cost for the new mail key that was purchased.

The landlord seeks \$300.00 in liquidated damages, pursuant to section A of the tenancy agreement addendum. The landlord provided a copy of this addendum with its Application. The clause states that if the tenants terminate the tenancy prior to the end of the fixed term, they are required to pay liquidated damages, which is not a penalty, to cover the administration costs of re-renting the rental unit. The landlord stated that the tenants ended the fixed term tenancy prior to May 31, 2015, as they vacated on December 15, 2014. The landlord stated that the liquidated damages are a flat fee to cover the administrative work to list the property online, show the property to potential tenants, and complete the move-in procedure with new tenants. The landlord testified that the female tenant signed the move-out condition inspection report, indicating that \$300.00 was being charged for the tenants breaking the lease early.

The landlord also seeks \$2,150.00 for a loss of January 2015 rent. The landlord testified that \$10,750.00 was originally sought in its Application for loss of rent from January 1 to May 31, 2015. The landlord amended its claim at this hearing, seeking only one month of lost rent for January 2015. The landlord stated that the female tenant signed the move-out condition

inspection report, indicating that \$10,750.00 was being charged as a loss of rent for the above period, unless the rental unit could be re-rented. The landlord stated that she spoke with the female tenant during the signing of the move-out condition inspection report and advised her that this amount would be readjusted once the property was re-rented.

The landlord stated that the liquidated damages clause in the tenancy agreement addendum indicates that the landlord is not precluded from claiming a loss of rental income, if liquidated damages are paid by the tenants. The landlord testified that the tenants paid rent until December 31, 2014. The landlord stated that reasonable efforts were made to re-rent the rental unit after the tenants vacated on December 15, 2014. The landlord stated that the rental unit was listed for rental online on three different websites as of November 18, 2014, one day after notice was received by the tenants to vacate the rental unit. The landlord provided a copy of these advertisements with its Application. The landlord stated that the owners could not afford lost rental income while paying utilities for a vacant property, so they decided to move back into the rental unit. The landlord testified that the owners emailed her on January 23, 2015, stating that they were moving back into the rental unit as of February 1, 2015. The landlord stated that the online rental advertisements were only removed once notice was given by the owners that they would be moving back into the rental unit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Loss of Rent

I find that the landlord and tenants entered into a fixed term tenancy for the period from June 1, 2014 to May 31, 2015.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. In this case, the tenants vacated the rental unit on December 15, 2014,

before the completion of the fixed term on May 31, 2015. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises immediately after receiving written notice of the tenants' intention to vacate the rental unit. The landlord posted online rental advertisements the next day and provided copies of these advertisements. The owners decided to minimize their losses and move into the rental unit themselves when the rental unit was unable to re-rent within a reasonable period of time. As such, I am satisfied that the landlord has discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord is only claiming for one month of rental loss for January 2015, the period during which the property could not be re-rented due to the tenants' breach. The liquidated damages clause of the tenancy agreement addendum states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenants. The female tenant signed the move-out condition inspection report for this loss of rental income. Accordingly, I find that the landlord is entitled to \$2,150.00 for a loss of January 2015 rent from the tenants.

Liquidated Damages

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 liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after the tenants' breach. The cost of re-renting a rental unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than

they would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenants' breach. The next question is whether the \$300.00 amount specified in the tenancy agreement addendum is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$300.00 are to cover administrative costs to list the rental unit online and show the rental unit to potential tenants. I find that this amount is a genuine pre-estimate of the loss. The tenants breached the fixed term tenancy agreement and specifically initialled beside the liquidated damages provision in the addendum, stating that they are responsible for this cost. The female tenant signed the move-out condition inspection report stating that the tenants are responsible for this \$300.00 cost for breaking the lease. Accordingly, I find that the landlord is entitled to \$300.00 for liquidated damages from the tenants.

Mail Key

I accept the landlord's undisputed evidence that the tenants failed to return the mail key to the landlord when they vacated the rental unit. I accept the landlord's evidence that the owners were required to purchase a new mail key to replace the unreturned key. The female tenant signed the move-out condition inspection report stating that the tenants are responsible for paying \$10.00 if the mail key was not returned by December 18, 2014. Accordingly, I find that the landlord is entitled to \$10.00 for the replacement of the mail key.

Other Relief

The landlord continues to hold the tenants' security deposit of \$1,075.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,435.00 against the tenants as follows:

Item	Amount
Loss of January 2015 Rent	\$2,150.00
Liquidated Damages	300.00

Replacement of Mail Key	10.00
Less Security Deposit	-1,075.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$1,435.00

The landlord is provided with a monetary order in the amount of \$1,435.00 in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 20, 2015

Residential Tenancy Branch

