



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PW DEVELOPMENT LP & PW COMOX HOLDING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for liquidated damages and for the filing fee. The tenant applied for a monetary order for the return of double the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to liquidated damages? Is the tenant entitled to the return of double the security deposit?

Background and Evidence

On June 11, 2014 the parties entered into a tenancy agreement with a start date of September 15, 2014 for a monthly rent of \$1,475.00. The tenant paid a security deposit of \$737.50 that day. The tenant agreed that she entered into the agreement by viewing the floor plan of the unit, as the rental unit was still under construction.

The landlord filed a copy of the tenancy agreement into evidence. A clause in the agreement requires payment in the sum of \$1,000.00 as liquidated damages, should the tenant vacate before the end of the fixed term, or if the tenant breaches the agreement. The sum is not meant as a penalty but for all costs associated with re-renting the unit. By signing the tenancy agreement, the tenant agreed to the terms of the tenancy agreement which includes a clause regarding the payment of liquidated damages.

On July 21, 2014, the tenant decided that the rental unit was not suitable for her needs and provided the landlord with a written notice to end tenancy and requested the return of the security deposit. The written note also provided the landlord with a forwarding address.

The landlord attempted to offer the tenant a different unit, but the tenant refused as she was not able to find a suitable rental unit in the complex. The landlord stated that he was able to find a new tenant to occupy the rental unit and accordingly did not suffer a loss of income.

The landlord did not return the security deposit by October 21, 2014 which resulted in the tenant making application for the same. The landlord responded with an application of his own on November 04, 2014. The landlord also returned the deposit to the tenant that same day. The tenant agreed that she received the deposit in the amount of \$737.50.

Analysis

Landlord's application:

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the testimony of both parties, I find that the parties entered into a tenancy agreement on June 11, 2014, at which time the tenant paid the security deposit. Accordingly, the rights and obligations of both parties took effect that date, even though the tenant never moved in. Once the security deposit is paid, the tenancy is considered started.

I further find that the tenant was in a fixed term tenancy with an end date of September 30, 2015. By ending the tenancy prior to the end date, the tenant breached a term of the tenancy agreement.

The tenancy agreement contains a clause regarding liquidated damages. Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, 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.

In this case, the tenant breached the tenancy agreement by ending the tenancy prior to the end date of the fixed term. Therefore the landlord was faced with the cost of re-renting, which had been estimated and agreed to by the parties at the time the tenancy agreement was signed. The landlord was able to find a new tenant and therefore did not suffer a loss of income.

Based on the testimony of both parties and the terms of the tenancy agreement, I find that the liquidated damages clause does not constitute a penalty and that the landlord is entitled to compensation in the sum of \$1,000.00.

Since the landlord has proven his claim, I award him the recovery of the filing fee of \$50.00.

Tenants' application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

In this case, the tenant informed the landlord on July 21, 2014 that she would not be moving in and provided a forwarding address that same day. The landlord filed his application on November 04, 2014 which is beyond the legislated time frame of 15 days. Therefore the tenant is entitled to the return of double the security deposit in the amount of \$1,475.00.

Since the tenant has proven her claim, she is entitled to the recovery of the filing fee.

The landlord has established a claim of \$1,050.00 while the tenant has established a claim of \$1,525.00. The landlord has already returned \$737.50 to the tenant and therefore the tenant's entitlement is \$787.50.

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$262.50 which consists of the difference between the established claims of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$262.50. 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 **\$262.50**.

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: June 18, 2015

Residential Tenancy Branch

