



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's 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 tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 24 minutes. The landlord's agent, KO ("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 licensed rental 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. Witness LL, who is the rental building manager, testified on behalf of the landlord company at this hearing.

The landlord testified that she served the tenant with the landlord's original application for dispute resolution hearing package on January 23, 2015 and the amended application ("Application") on April 17, 2015, both by way of registered mail. The landlord provided Canada Post receipts and tracking numbers as proof of service, with the landlord's Application. The landlord confirmed that she checked the tracking numbers on the Canada Post website and determined that the tenant received and signed for the original application on January 27, 2015 and the amended Application on April 20, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on January 28, 2015 and amended Application on April 22, 2015, five days after each of their registered mailings.

Issues to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord testified that this tenancy began on October 1, 2014 for a fixed term of one year to end on September 30, 2015. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant 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 tenant vacated the rental unit on December 31, 2014, pursuant to the tenant's letter, dated November 27, 2014, which was received by the landlord on November 27, 2014. The landlord indicated that a move-in condition inspection and report were completed on October 1, 2014 and a move-out condition inspection and report were completed on January 8, 2015. The landlord provided a copy of both reports with its Application. Both parties signed the move-in condition inspection report, while only the tenant's father signed the move-out condition inspection report. The landlord stated that the tenant's father attended the move-out condition inspection on behalf of the tenant, which the landlord confirmed in an email to the tenant on January 12, 2015. The landlord stated that the tenant's forwarding address was received in writing from the tenant's father on January 8, 2015, on the move-out condition inspection report.

The landlord seeks a monetary order of \$3,500.00 plus the recovery of the \$50.00 filing fee for its Application.

The landlord seeks \$700.00 in liquidated damages, pursuant to clause 1 of the tenancy agreement addendum. The landlord provided a copy of this addendum with its Application. The tenant specifically initialled beside this provision in the addendum. The clause states that if the tenant terminates the tenancy prior to the end of the fixed term, he is required to pay liquidated damages, which is not a penalty, to cover all costs associated with re-renting the rental unit. The landlord stated that the tenant ended the fixed term tenancy prior to September 30, 2015, as he vacated on December 31, 2014. The landlord stated that the liquidated damages are not a penalty but a genuine pre-estimate of the costs of re-rental. The landlord indicated that this fee covers the additional work required by the landlord at an earlier time before the end of the fixed term, to list the property, show the property to potential tenants, collect rental applications, and send applications to the landlord's office for credit and reference checks. The landlord

testified that the tenant agreed to “liquidate” the agreement with the landlord for a “minimal cost,” as per the tenant’s written notice to vacate, dated November 27, 2014. The landlord stated that the tenant’s email, dated January 22, 2015, indicates that the tenant gave written permission to use the security deposit of \$700.00 “towards this months rent.” This was in response to the landlord’s email to the tenant, dated January 12, 2015, when the landlord inquired as to whether the tenant would agree to use the security deposit to cover the “liquidation costs of breaking the fixed term tenancy agreement.”

The landlord also seeks \$2,800.00 total for a loss of January and February 2015 rent. 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 tenant. The landlord testified that the tenant paid rent until December 31, 2014. The landlord stated that reasonable efforts were made to re-rent the rental unit after the tenant vacated on December 31, 2014.

The landlord stated that the rental unit was listed for rent online on a popular advertising website as of December 1, 2014. The landlord provided a copy of these advertisements with its Application. The landlord indicated that these advertisements were re-posted and renewed in January and February 2015, in order to maintain priority space on the website. The landlord stated that the positive points of the rental unit were highlighted in the advertisements. Witness LL noted that there was no effort to reduce the rental price of the unit because it is a one-bedroom unit, approximately 800 square feet with new renovations completed as well as an ocean view. The landlord stated that a new tenant began re-renting the unit as of March 1, 2015 for a fixed term of one year. The landlord provided a copy of the fixed term tenancy agreement for the new tenant. Witness LL stated that it took some time to re-rent the unit, despite numerous showings, because it was a slow time of the year for rentals and some potential tenants wanted bigger two-bedroom units available in the same rental building from the same landlord for only a “couple of hundred dollars more.”

Analysis

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

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from October 1, 2014 to September 30, 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 tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, he could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on December 31, 2014, before the completion of the fixed term on September 30, 2015. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* 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 soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement a few days later. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, particularly during the winter months, and that the landlord had numerous showings where potential tenants preferred a larger unit offered by the same landlord. The landlord noted that the new tenant responded to the advertisement on February 5, 2015 and the property was rented as of that date, to commence on March 1, 2015. Although the landlord did not reduce the rental price or the fixed length term, the landlord explained the positive features of this unit to justify the price as well as the security of the fixed term lease. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks two months of rental loss for January and February 2015, the period during which the property could not be re-rented due to the tenant's 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 tenant. Accordingly, I find that the landlord is entitled to \$2,800.00 for a loss of January and February 2015 rent from the tenant.

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 tenant's breach. The cost of re-renting a 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 it 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 tenant's breach. The next question is whether the \$700.00 amount specified in the tenancy agreement addendum is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$700.00 are to cover administrative costs to list the rental unit online, show the rental unit to potential tenants, and collect and forward applications to the landlord for reference and credit checks. I find that this amount is a genuine pre-estimate of the loss. The tenant breached the fixed term tenancy agreement and specifically initialled beside the liquidated damages provision in the addendum, stating that he is responsible for this cost. The tenant confirmed in an email to the landlord that he was agreeable to \$700.00 being applied towards liquidated damages. Accordingly, I find that the landlord is entitled to \$700.00 for liquidated damages from the tenant.

Other Relief

The landlord continues to hold the tenant's security deposit of \$700.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's 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 \$2,850.00 against the tenant as follows:

Item	Amount
Loss of January 2015 Rent	\$1,400.00
Loss of February 2015 Rent	1,400.00
Liquidated Damages	700.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$2,850.00

The landlord is provided with a monetary order in the amount of \$2,850.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: August 05, 2015

Residential Tenancy Branch

