



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

The landlord applies for a monetary award for rent for April 2015, cleaning costs and a "liquidation cost" of \$437.50

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord is entitled to any of the monetary relief requested?

Background and Evidence

The rental unit is a one bedroom apartment in a 45 unit apartment building.

The tenant rented the unit as an abode for a relative. He himself lives in a different apartment in the same building.

The tenancy started in January 2015. There is a written tenancy agreement. It shows that monthly rent was \$875.00. The landlord holds a \$437.50 security deposit.

The agreement states that the tenancy starts on January 15, 2015 and ends July 31, 2015. The tenant has signed the agreement but says he never received a copy until this hearing and that he understood it was a month to month tenancy.

The landlord's representative testifies that the tenants gave a one month notice to end the tenancy but that the landlord received it on March 4th and so the tenant must pay the April rent.

She says that the tenant signed an acknowledgement that he owed that rent plus cleaning costs of \$168.00 plus the liquidation cost charge of \$437.50. She agrees that though the tenant signed the document, he wrote on it that he did not agree with it.

The tenant's brother Mr. A.C. testifies that he and the tenant gave verbal notice to the landlord on February 28th and that Ms. L.V. told them to give it in writing the next week, which they did.

He says the landlord re-rented the premises for April 1 and has not suffered any loss.

In reply, the landlord's representative generally denies the tenant's claims.

Analysis

It is not clear whether it is the landlord's position that this is a fixed term tenancy or whether the tenant could end it on giving one month's notice pursuant to clause 4 of the agreement.

Even giving the tenant the benefit of the doubt on this question of interpretation, it is a requirement of the *Residential Tenancy Act* (the "Act") s. 52, that notice to end a tenancy be given in writing.

The tenant's written notice purported to end the tenancy on April 5. Thus he could not avoid the contractual requirement to pay the \$875.00 rent in advance that came due on April 1, 2015 under the tenancy agreement. The landlord was contractually entitled to receive that amount on that date.

The tenant's assertion that the landlord re-rented the premises to another on April 1, thereby mitigating its loss, has not been established at this hearing, in the face of the landlord's representative's denial.

The landlord is entitled to recover the April rent of \$875.00.

The landlord claims \$437.50 under a clause in the tenancy agreement that reads:

... if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement at an end and in such event the sum of \$437.50 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other right or remedies available to the Landlord.

Liquidated damages clauses are permitted in tenancy agreements and are enforced so long as they are shown to be reasonable pre-estimate of damages to be incurred in a given situation and are not a penalty.

The fact that a liquidated damages clause describes itself as not being a penalty has little weight in determining its true nature.

In this case, the clause fails to describe what the damages are for. The clause tells us when the liquidated damages clause is triggered; in the event of an early termination of the tenancy by the tenant, but the clause fails to tell us what the liquidated damages are meant to be pre-estimate of. In result, the clause is meaningless and cannot be enforced.

I dismiss the landlord's claim for liquidated damages.

I dismiss the landlord's claim for cleaning. The written document signed by the tenant, presented by the landlord as proof of agreement to the cleaning charges, shows that he did not agree.

The tenant testified that the premises were clean and the landlord has not given evidence to show that the premises were not reasonably clean when the tenant left.

Conclusion

The landlord's application is allowed in part. The landlord is entitled to a monetary award of \$875.00. Given the result, I award the landlord recovery of \$25.00 of the filing fee.

I authorize the landlord to retain the \$437.50 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$462.50.

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: September 17, 2015

Residential Tenancy Branch

