



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD OLC FF

Introduction

This hearing dealt with (a) an application by the landlord for a monetary order and (b) an application by the tenants for a monetary order. Both parties have requested recovery of the filing fee. Both parties attended the hearing and had an opportunity to be heard.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on May 1, 2015 and was supposed to be for a fixed term ending on July 31, 2015. The landlord specializes in furnished short term rentals in downtown Vancouver. The rent was \$1300 per month. A security deposit of \$650.00 and pet damage deposit of \$350.00 were paid at the start of the tenancy. The tenancy agreement contained 'liquidated damages' clause that stipulated that the tenant would pay \$1300.00 in the event that the lease was broken before the end of the term. An addendum to the tenancy agreement further stipulated that the tenant would pay any utilities that rose above a \$20.00 per month flat rate and that the tenant would be charged a \$100.00 cleaning fee at the end of the tenancy. Condition inspection reports were completed upon move-in and move-out.

After the tenants moved into the rental unit, there were several incidents involving other occupants in the building which caused the tenants to be concerned for their safety and for that of their pet. As a result, the tenants gave the landlord written notice on June 19, 2015 that they would be vacating the rental unit on June 30th. The landlord advised the tenants that they were breaking the lease prematurely, that this was not one months' notice but that they would immediately start looking for new tenants for the unit. The landlord was successful in finding a new tenant commencing July 15, 2015. The tenants did vacate the rental unit on June 30th.

On the move out condition inspection report that was completed with the building manager on June 30, 2015, the tenants provided the landlord with their forwarding address in writing. When

the tenants had not received their deposits back after a period of time, the tenants again provided the landlord with their forwarding address in writing on July 23, 2015.

To date, the tenants have not received any of their deposits back from the landlord. The tenants never gave the landlord written authority to retain all or any portion of their deposits.

On August 7, 2015 the landlord filed an application for dispute resolution claiming against the tenants. On October 6, 2015, the tenants filed an application for dispute resolution claiming against the landlord.

Analysis

Landlord's Claim

The landlord has made a monetary claim comprised of the following:

Standard Cleaning	\$ 100.00
Liquidated Damages (Breaking Contract)	\$1300.00
Utilities	\$ 26.75
TOTAL	\$1426.75

I shall deal with each claim in turn.

Standard Cleaning (\$100.00) – The landlord makes this claim based on a term in the addendum to the tenancy agreement which states as follows:

“At the end of the lease, the tenant is required to return the property in a tidy condition with no garbage or personal items left in the apartment. The landlord will conduct a professional cleaning in order to return the property to a move-in condition. The cost of this cleaning will be deducted from the tenant's security deposit. The cleaning cost will be computed based on the size of the unit (Studio \$100,....).”

Given the nature of the landlord's business being that of short term furnished rentals I can understand the need for a professional cleaning to be done in between each rental. I do not find the amount claimed for this cleaning requirement to be excessive and the tenant was aware of this fee at the outset of the tenancy. I realize the tenant feels that the unit was left perfectly clean but I am persuaded by the landlord that a higher level of cleaning in between tenants is necessary due to the type of rental business they run. **On balance, I am satisfied that the landlord has established this portion of its claim.**

Liquidated damages (\$1300.00) - The landlord makes this claim based on a provision of the tenancy agreement which states in part as follows:

“...if the tenant provides the landlord with notice...of an intention to breach this agreement and end the tenancy by vacating , and does vacate before the end of any fixed term, the tenant will pay the landlord the sum of \$1300.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. ...”

In considering a liquidated damages clause such as this one where the amount stipulated is large I refer to Residential Tenancy Policy Guideline No. 4 for guidance as to whether this clause is enforceable. The guideline says in part as follows:

This guideline deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of 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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. 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. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.

In the present case, the landlord has essentially stipulated an entire month's rent as the liquidated damages for breaking the fixed term lease early. To my mind this seems extravagant and more in the form of a penalty than a genuine pre-estimate of the costs associated with having to re-rent the unit earlier than expected. While I realize that it could be argued that the

short term nature of the leases this landlord enters into makes the risk of an early termination more difficult to mitigate, it could also be argued that finding short term renters is actually easier and more fluid than finding long term tenants. And, in fact, this very notion is borne out by the fact that the landlord received the tenant's notice and was able to find new tenants to move in almost immediately.

In my view, the landlord should be entitled to recover the half month's rent that was lost as a result of the tenants breaking the fixed term lease early but should not be held to a penalty of \$1300.00.

In the result then, I find that the liquidated damages clause contained in the tenancy agreement is unenforceable as being more in the nature of a penalty rather than a genuine pre-estimate of damages.

I am satisfied however, that the landlord has established a claim of \$650.00 in unpaid rent for June based on inadequate notice. The tenant would have been liable for the entire month of July had the landlord not been able to find new tenants so quickly.

Utilities (\$26.75) – The landlord makes this claim based on a provision of the addendum to the tenancy agreement that says the tenants will pay any utilities over \$20.00 per month. In this case the landlord claims the tenants used \$26.75 over the \$20.00 flat rate. The tenants did not dispute this claim at the hearing. Based on the information before me, **I am satisfied that the landlord has established this portion of its claim.**

Tenants Claim

Double Security and Pet Damage Deposit (\$2,000.00) – The tenants have made a monetary claim in the amount of \$2,000.00 representing double the amount of their Security and pet damage deposits.

In this regard, Section 38(1) of the *Act* says that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

- repay any security deposit or pet damage deposit to the tenant with interest; or
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) then goes on to say that if a landlord does not comply with the above, the landlord may not make a claim against the deposit(s) and **must pay the tenant double** the amount of the security deposit, pet damage deposit, or both, as applicable.

In the present case, the landlord has not returned the tenant's security deposit or pet damage deposit and did not file a claim against the deposits within 15 days of receiving the tenants' forwarding address. The tenants provided their forwarding address to the landlord in writing on the move-out condition inspection report on June 30, 2015. The landlord was then required to either return the entire deposit to the tenants or file an application claiming against it by no later than July 15, 2015. However, the landlord did not file its claim until August 7, 2015. **As a result, the landlord must pay to the tenant double the amount of the deposit in the amount of \$2,000.00**

Conclusion

I have found that the landlord has established a total monetary claim against the tenants in the amount of \$776.75.

I have found that the tenants have established a total monetary claim against the landlord in the amount of \$2,000.00.

When set off against each other, there remains a balance owing to the tenants in the amount of \$1,223.25. **I therefore order that the landlord pay to the tenants the sum of \$1,223.25.** This order may be filed and enforced in the Small Claims Court of British Columbia.

I dismiss both parties' requests to recover their filing fees from each other.

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: December 14, 2015

Residential Tenancy Branch

