



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX Kelowna Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / loss of rental income, retention of the security deposit, and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord's agent (the "landlord") requested that the application be amended to include a monetary order reflecting compensation for damage or loss under the Act, Regulation or tenancy agreement ("liquidated damages"). The tenant consented to the landlord's request and the original application was so amended.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement which was signed by the parties on June 23, 2015, the fixed term of tenancy was from July 15, 2015 to July 31, 2016. Monthly rent of \$2,750.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,375.00 was collected. While "KA" and "BW" are named as the 2 tenants on the tenancy agreement, "BW's" address is unknown, and so only tenant "KA" was named by the landlord in the application and served with the hearing package.

By way of text message and / or telephone conversation, on or about July 06, 2015 the tenant informed the landlord that as a result of a change in personal circumstances, she would not be proceeding with the tenancy. The landlord testified that "almost immediately" the landlord began to re-advertise the unit for rent. Advertising was undertaken principally by way of online resources. Ultimately, the landlord succeeded

in finding new renters for a fixed term beginning from August 15, 2015, but at a \$250.00 reduction in monthly rent to \$2,500.00. Accordingly, the landlord seeks compensation for unpaid rent / loss of rental income for the period from July 15 to August 14, 2015 in the amount of \$2,750.00, in addition to liquidated damages of \$625.00, and recovery of the \$50.00 filing fee.

Analysis

At the outset, the attention of the parties is drawn to specific statutory provisions.

Section 16 of the Act addresses **Start of rights and obligations under tenancy agreement**:

16 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.

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(2) 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.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their

tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Further, clause # 5 of the tenancy agreement speaks to “liquidated damages:”

LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in (B) above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$625.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord’s costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

Based on the documentary evidence and testimony, and in consideration of the relevant statutory and tenancy agreement provisions, my findings are set out below.

I find that the parties entered into a fixed term tenancy for the period from July 15, 2015 to July 31, 2016 pursuant to a written tenancy agreement which was signed by the parties on June 23, 2015. I find that on or about July 06, 2015 the tenant gave notice to end the tenancy “earlier than the date specified in the tenancy agreement as the end of the tenancy.” Despite the fact that the tenant did not ever occupy the unit, pursuant to section 16 of the Act, I find that she was bound by “the rights and obligations of a landlord and tenant” from the date the tenancy agreement was entered into on June 23, 2015. Following from the foregoing, I find that the tenant’s notice to end the tenancy early does not comply with section 45 of the Act. I further find that the landlord took reasonable steps to mitigate the loss of rental income by advertising for new renters in a timely fashion, in addition to lowering the amount of monthly rent sought.

Pursuant to the above, I find that the landlord has established entitlement to unpaid rent / loss of rental income for the period from July 15 to August 14, 2015 in the total amount of **\$2,750.00**. As well, I find that the landlord has established entitlement to liquidated damages of **\$625.00**. Lastly, as the landlord has succeeded with this application, I also find that the landlord has established entitlement to recovery of the **\$50.00** filing fee **[total: \$3,425.00]**.

I order that the landlord retain the tenant's security deposit of **\$1,375.00**, and I grant the landlord a **monetary order** for the balance owed of **\$2,050.00** (\$3,425.00 - \$1,375.00).

Finally, the attention of the parties is drawn to Residential Tenancy Policy Guideline # 13, which speaks to "Rights and Responsibilities of Co-Tenants," and provides in part:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$2,050.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims 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: January 19, 2016

Residential Tenancy Branch

