



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on January 12, 2016. An amended copy of the landlord's claim and evidence was sent to the tenants on July 16, 2016 by registered mail. Canada Post tracking numbers were provided by the landlord in oral evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary issues

In the details of the dispute and in the landlord's revised application contain sufficient information to inform the tenants of the landlord's revised claim, I have allowed that revised claim in part. The landlord's monetary claim for the correct amount of liquidated damages of \$800.00 is allowed and the landlord's claim to retain all or part of the security deposit is allowed.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security and pet deposit?

Background and Evidence

The landlord testified that this tenancy started on August 01, 2015 for a fixed term tenancy that was not due to end until July 31, 2016. Rent for this unit was \$1,575.00 per month. Rent was due on the 1st of each month. The tenants paid a security deposit of \$780.50 and a pet deposit of \$300.00 at the start of the tenancy. The parties conducted a move in and a move out condition inspection of the unit. The tenants provided a forward address in writing to the landlord on January 04, 2016.

The landlord testified that he received an email from the downstairs tenant informing the landlord that she was very unhappy about noise from the upper unit. The landlord spoke to that tenant about her concerns but before he had the chance to send the upper tenants a warning letter or a Notice to End Tenancy, the upper tenants gave the landlord notice to end their tenancy on December 31, 2016 because they were uncomfortable with the situation between them and the downstairs tenant. The tenants moved out in accordance with their notice on December 31, 2015.

The landlord testified that he was undergoing chemotherapy and had misplaced the tenancy agreement so was unsure about the amount of liquidated damages provided for in the tenancy agreement when he filed his application on January 07, 2016. Later when the landlord found the tenancy agreement he revised his claim for the correct amount as provided for under the tenancy agreement for liquidated damages because the tenants ended the tenancy before the fixed term.

The landlord testified that after the landlord and tenants had gone through the unit at the end of the tenancy the landlord raised the matter of liquidated damages with the tenants but was told they were justified in moving out because of complaints made by the downstairs tenant. The landlord testified that the tenants are not permitted to end a fixed term tenancy before the end of the fixed term. The landlord referred to clause five of the tenancy agreement which says that liquidated damages of \$800.00 will be charged if the tenants end the tenancy early.

The landlord seeks an Order to recover the \$800.00 and to offset this amount from the security and pet deposits.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim to recover \$800.00 for liquidated damages; In order for a liquidated damages clause to be upheld, two conditions must be met. First, the amount of the damages identified must roughly approximate the damages likely to fall upon the party seeking

the benefit of the term. Second, the damages must be sufficiently uncertain at the time the contract is made that such a clause will likely save both parties the future difficulty of estimating damages. This information is also contained in the Residential Tenancy Policy Guidelines #4.

I am satisfied from the evidence before me that the tenancy agreement under clause five, provides for a fee for liquidated damages and not as a penalty and this fee will be applied if the tenants end the tenancy before the end of the fixed term. I am satisfied that this is a genuine pre-estimate of the loss at the time the contract is entered into and that the landlord incurred costs to re-rent this unit.

Therefore, due to the above I find the landlord is permitted to retain the amount of \$800.00 from the security and pet deposits pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has merit I find the landlord may also retain the filing fee of \$50.00 from the deposits.

Security and pet deposits	\$1,080.50
Less liquidated damages and filing fee	(-\$850.00)
Balance of pet deposits to be returned to the tenants	\$230.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may deduct the amount of \$850.00 from the security and pet deposits.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$230.50** for the balance of the pet deposit pursuant to s. 38(6)(b) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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 10, 2016

Residential Tenancy Branch

