



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated August 16, 2016 (the "Application"). The Landlord applied for an order to keep all or part of the security deposit or pet damage deposit in satisfaction of the claim, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord was represented at the hearing by L.W. The Tenants attended the hearing on their own behalves. All parties in attendance provided affirmed testimony.

On behalf of the Landlord, L.W. testified that the Application package, including the Notice of a Dispute Resolution Hearing, was served on the Tenant by registered mail on August 20, 2016. The Application package was sent to the forwarding address provided by the Tenants, who acknowledged receipt of it. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to have been received five days later. I find the Tenants are deemed to have received the Landlord's Application package on August 25, 2016.

The parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, it was noted that the Landlord's name was abbreviated in the Application. Pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the Application to reflect the complete name of the Landlord.

Issue to be Decided

Is the Landlord entitled to an order allowing it to keep all or part of the security deposit or pet damage deposit?

Background and Evidence

The written tenancy agreement between the parties was not submitted into evidence. However, the parties confirmed they entered into a fixed-term tenancy for the period from November 1, 2015 to October 31, 2016. Rent was due in the amount of \$980.00 per month. The Tenants paid a security deposit of \$490.00 and a pet damage deposit of \$490.00. However, the Landlord returned \$630.00 to the Tenants and has retained \$350.00 pending the outcome of this hearing.

On behalf of the Landlord, L.W. testified that the Tenants ended the fixed term tenancy early. Accordingly, the Landlord sought to recover \$350.00 as liquidated damages pursuant to the tenancy agreement. The Tenants confirmed during the hearing that they moved out of the rental unit on July 31, 2016, which was three months before the end of the fixed term.

Although the Landlord did not submit a copy of the tenancy agreement into evidence, the Tenant A.V. read the liquidated damages clause aloud from the Tenants' copy of the agreement. The clause confirmed the liquidated damages amount of \$350.00 was a pre-estimate of damages and was not a penalty. The Tenants confirmed they both signed the tenancy agreement.

However, the Tenants disputed the Landlord's claim on the basis that the Landlord agreed to perform a number of repairs to the rental unit at the beginning of the tenancy, but that these repairs were not completed. In addition, the Tenants testified they did not have access to the balcony for some time during the tenancy, and that money was wasted buying a barbeque and patio furniture that could not be used.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In this case, the Landlord testified that the Tenants breached a fixed-term tenancy agreement. Policy Guideline 30 confirms that fixed-term tenancies exist when “the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date.” Policy Guideline 30 stipulates that “neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties.” Based on the oral testimony of the parties, I find the Landlord and Tenants were parties to a fixed-term tenancy agreement for the period from November 1, 2015 to October 31, 2016, and that the Tenants breached the fixed-term tenancy agreement by vacating the rental unit on July 31, 2016.

As a result of the breach, the Landlord claims to be entitled to liquidated damages, which are described in Residential Tenancy Branch Policy Guideline 4:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in an 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.

...

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.

[Reproduced as written.]

The Tenant A.V. confirmed the existence of a liquidated damages clause by reading aloud from the tenancy agreement during the hearing. I find the liquidated damages clause as read by the Tenant A.V. was a pre-estimate of damages and was not a penalty. The clause was agreed to in advance and the tenancy agreement was signed

by both parties. Further, the amount claimed is a reasonable amount when compared to monthly rent and was not oppressive. Accordingly, I find the Landlord is entitled to retain the balance of the security and pet damage deposits held (\$350.00) is satisfaction of the liquidated damages.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Conclusion

I order that the Landlord is permitted to retain the balance of the security and pet damage deposits held (\$350.00) is satisfaction of the liquidated damages claim.

In addition, I grant the Landlord a monetary order in the amount of \$100.00, which may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 20, 2017

Residential Tenancy Branch