



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 5, 2018, wherein the Landlord sought monetary compensation from the Tenant for loss of rent and liquidated damages, authority to retain the Tenant's security deposit as well as recovery of the filing fee.

Only the Landlord's Agent called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:52 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's agent and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that she served the Tenant with the Notice of Hearing and the Application on March 8, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord's Agent testified that the Tenant's partner signed for the package on March 12, 2018.

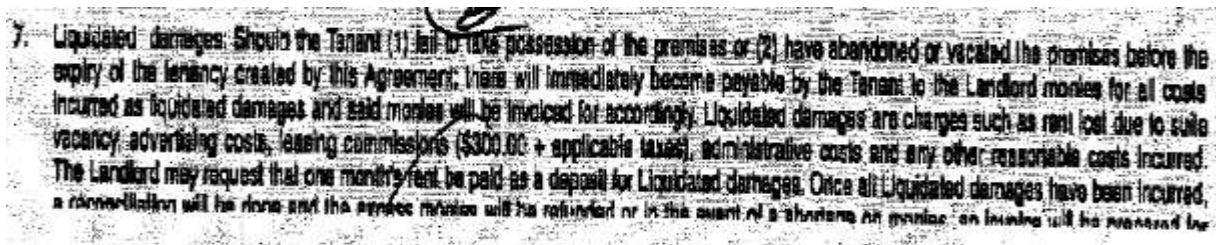
Pursuant to *Residential Tenancy Policy Guideline 12—Service Provisions* and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; however in this case and based on the Landlord's Agent's

testimony, I find the Tenant was served as of March 12, 2018 and I proceeded with the hearing in their absence.

Preliminary Matter

In the within action, the Landlord sought monetary compensation for unpaid rent for the month of March 2018 in the amount of \$1,400.00 as well as the sum of \$300.00 in liquidated damages pursuant to clause 7 of the tenancy agreement.

Introduced in evidence by the Landlord were two copies of the residential tenancy agreement. In the first copy, clause 7 is excluded. In the second copy, clause 7 of the agreement is incomplete and reads as follows:



7. Liquidated damages: Should the Tenant (1) fail to take possession of the premises or (2) have abandoned or vacated the premises before the expiry of the tenancy created by this Agreement, there will immediately become payable by the Tenant to the Landlord monies for all costs incurred as liquidated damages and said monies will be invoiced for accordingly. Liquidated damages are charges such as rent lost due to suite vacancy, advertising costs, leasing commissions (\$300.00 + applicable taxes), administrative costs and any other reasonable costs incurred. The Landlord may request that one monthly rent be paid as a deposit for Liquidated damages. Once all Liquidated damages have been incurred, a reconciliation will be done and the deposit monies will be refunded or in the event of a shortage an amount on footing will be requested for

As is clear from the above copy, the entirety of clause 7 was not readable. As the Landlord's claim includes a request for compensation pursuant to clause 7 I am unable to consider this claim without a clear and complete copy of the residential tenancy agreement and in particular a clear and complete copy of clause 7.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 3.7 of the *Rules* provides that all documents to be relied upon must be clear and legible and reads as follows:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

On October 2, 2018 I made an Interim Order that the Landlord resubmit a clear copy of the residential tenancy agreement by no later than October 17, 2018. When this copy had not been received, staff at the residential tenancy branch called the Landlord and left a voicemail message directing the Landlord to resubmit a clear copy of the tenancy agreement.

Branch Records indicate this earlier Interim Decision may not have been sent to the Landlord or the Tenant and based on information received from the Landlord after the October 17, 2018 call. As such, and by Interim Decision dated October 23, 2018, I extended my original intended deadline of October 17, 2018 to October 31, 2018 to give the Landlord an opportunity to resubmit the tenancy agreement.

I confirm that I have reviewed branch records again and confirm that the Landlord has not filed a clear copy of the tenancy agreement.

As set out in my Interim Decision of October 23, 2018 I exercise my discretion pursuant to *Rule 3.7* to not consider Clause 7 of the residential tenancy agreement as it is not clear and legible.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be permitted to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agent testified that this one year fixed term tenancy began on June 1, 2017. A copy of the residential tenancy agreement was provided in evidence and which confirmed that the fixed term was scheduled to end on May 31, 2018 following which it was to continue on a month to month basis.

By email dated February 23, 2018, the Tenant gave notice to end the tenancy on February 28, 2018 (three months prior to the expiration of the fixed term); a copy of this email was provided in evidence.

The Landlord's agent testified that the rental unit was not rented until June 2018. She stated that they were only provided five days' notice and as such could not rent the unit for March 1, 2018. She also noted that the rental unit is in a no smoking strata building which limits the prospective tenant pool. The Landlord's agent further testified that she "runs ads constantly" and despite her efforts was not able rent the unit until June 1, 2018.

In the within action, the Landlord sought monetary compensation for unpaid rent for the month of March 2018 in the amount of \$1,400.00 as well as \$300.00 in liquidated damages pursuant to clause 7 of the tenancy agreement.

The Landlord's Agent confirmed that the sum of \$700.00 was erroneously noted on the Application in terms of the liquidated damages as opposed to the correct figure of \$300.00.

The Landlord's agent confirmed that the Landlord continues to hold the sum of \$700.00 as a security deposit and \$700.00 as a pet damage deposit.

Analysis

After consideration of the undisputed testimony and evidence before me and on a balance of probabilities I find as follows.

The Landlords seeks compensation for unpaid rent for the month of March 2018.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

45 (1) A tenant may end a periodic 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, and

(b) 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.

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

In this case the Tenant gave notice to end the tenancy on February 23, 2018. Pursuant to section 45(2)(b), and the express terms of the fixed term tenancy agreement, the effective date of the Tenant's notice is May 31, 2018.

I accept the Landlords' evidence that they made their best efforts to re-rent the unit as of March 1, 2018, however as the Tenant only gave notice five days prior to the end of the month, the Landlord suffered a loss of rent for March 2018. While the Landlord's agent testified that Landlord did not rent the unit until June 1, 2018, the Application only contains a claim for loss of rent for March 2018; accordingly I award the Landlord the **\$1,400.00** claimed for March 2018.

The Landlord also sought the sum of \$300.00 in liquidated damages pursuant to clause 7 of the tenancy agreement.

As set out in *Residential Tenancy Policy Guideline 4—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”. Liquidated damages must be a genuine pre-estimate of the loss, which is agreed to by the parties at the time they enter into the tenancy agreement. An Arbitrator must have the opportunity to review the clause in its entirety to consider its enforceability. As paragraph 7 of the tenancy agreement was not legible or readable, I dismiss the Landlord’s claim for liquidated damages.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$1,500.00 representing compensation for loss of rent for March 2018 in the amount of \$1,400.00 and recovery of the \$100.00 filing fee.

I authorize the Landlords to retain the Tenant’s \$1,400.00 pet damage and security deposit and I award the Landlord a Monetary Order for the balance due in the amount of **\$100.00**. This Monetary Order must be served on the Tenant by the Landlords and may be filed and enforce in the B.C. Provincial Court (Small Claims Division).

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: November 1, 2018

Residential Tenancy Branch