



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MNSD
Landlord: MNR, MNDC-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord originally filed their application **July 13, 2018** for Orders as follows;

1. A monetary Order for damage or loss(liquidated damages) – Section 67
2. A monetary Order for Unpaid rent and late rent fee – Section 67
3. An Order to keep the security deposit as set off – Section 38
4. An Order to recover the filing fee for this application (\$100) - Section 72.

The tenant originally filed their application **July 16, 2018** pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The parties each acknowledged receiving the application and all evidence of the other.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for loss of revenue, liquidated damages and late rent fee?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The undisputed evidence in this matter is as follows. The subject tenancy began April 01, 2018 as a written fixed-term tenancy agreement with an effective end date of March 31, 2018. The tenancy ended June 30, 2018 after the tenant provided the landlord with their Notice to vacate on May 30, 2018.

The hearing had benefit of the written Tenancy Agreement. At the outset of the tenancy the landlord collected a security deposit in the amount of \$587.50 which the landlord retains in trust. During the tenancy the payable rent was in the amount of \$1175.00 due in advance on the first day of each month. The parties agree there was a *move in* inspection conducted by the parties at the start of the tenancy.

The parties agree there was a mutual *move out* condition inspection conducted June 29, 2018 at which time the condition inspection report was populated by the tenant's written forwarding address.

The parties agreed the tenancy effectively ended December 31, 2015. On January 02, 2016 the landlord found the rental unit unlocked, vacant and with the keys inside the unit.

Tenant's application

The tenant seeks the return of their security deposit in the amount of \$587.50.

Landlord's application

The landlord testified they acted on the tenant's notice and began advertising the rental unit on June 01, 2018 once the tenancy ended. The landlord testified they placed an advertisement on Craigslist for which they provided evidence, and additional evidence they renewed the listing on 5 subsequent dates to July 06, 2018 and in the process reduced the ask rent to \$1125.00. They testified they also employed placing the advertisement on their 'in house' site. The parties acknowledged the tenant also aided the landlord in their efforts to re-rent the unit throughout the month of June 2018. The landlord testified they conducted showings of the unit to no avail, however the landlord was not certain as to the reason(s) respecting the lack of success and ultimately lowered the ask rent from the payable rent during the tenancy. The landlord claims they

were successful in re-renting the unit for August 01, 2018 for the payable rent of \$1125.00.

The landlord effectively seeks loss of revenue rather than rent pursuant to a prematurely ended tenancy for the month of July 2018 in the amount of \$1175.00. The landlord further seeks *liquidated damages* of \$587.50 pursuant to the tenancy agreement. The landlord is also claiming a late payment of rent fee of \$25.00.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

I find that the tenancy ended June 30, 2018 and the landlord received the forwarding address prior to that date. I find the landlord made their original application on the 14th day after receiving the forwarding address. As a result the tenant is not entitled to the doubling provisions afforded by Section 38 of the Act.

Landlord's claim

I find that a tenant who signs a fixed term tenancy agreement / contract is responsible for the rent to the end of the fixed term.

In addition, the landlord's claim for any loss of revenue is subject to their statutory duty pursuant to **Section 7(2)** of the Act to do whatever is reasonable to minimize the loss. I find the landlord has provided sufficient *proof* showing what reasonable steps were taken to *mitigate or minimize* the potential loss of revenue. I accept the landlord's evidence they repeatedly advertised the rental unit throughout June 2018 and further lowered the ask rent in their attempt to re-rent the unit. As a result, I grant the landlord their claim for loss of revenue for the month of July 2018 in the amount of **\$1175.00**. I find that when rent is in dispute or undetermined as in this matter, or is part of a dispute resolution claim for loss of revenue, it cannot be said the payment of rent is late until determined by an Arbitrator as *late rent*. In this matter the tenancy ended at the end of June 2018 as did the obligation to pay rent. The landlord has applied for a loss of revenue due to a contractual obligation and not for rent. As a result I find that the landlord's ancillary claim for a late payment of rent fee is **dismissed**.

I find that a Tenancy Agreement is, effectively, a contract for a tenancy. I find the tenant signed the contractual Tenancy Agreement including confirming their consent to the landlord's clause of the pre-estimate of administrative costs for re-renting the unit in the event the tenant determined to end the tenancy earlier than the terms afforded by the fixed term contract. Residential Tenancy Policy Guidelines (RTPG) respecting *Liquidated Damages* state that in order for a landlord's claim of *Liquidated Damages* to be enforceable, their claim in the Tenancy Agreement must be a *genuine pre-estimate of loss at the time the contract is entered into*. If the amount for liquidated damages is deemed extravagant in comparison to the greatest loss that would be incurred by the landlord to re-rent the unit, the liquidated damages clause may be interpreted as a penalty or unconscionable, and therefore unenforceable in legal proceedings. However, if the *Liquidated Damage* clause is determined to be valid the tenant must then pay the stipulated amount in the Agreement / contract even where the eventual actual costs do not amount to the pre-estimate, or are non-existent.

The landlord claim is that the *Liquidated Damages* charge is to compensate them for their administrative costs for advertising and re-renting the unit resulting from an early end to the tenancy in breach of the Tenancy Agreement. I accept the landlord's evidence in this regard, and as a result I find the contract's clause respecting *Liquidated Damages* clause is not extravagant and not a penalty, and therefore valid and enforceable. I find the tenant ended the Tenancy Agreement early and in doing so breached the provisions within the agreement triggering the landlord's entitlement to claim *Liquidated Damages*. Therefore, I find that the landlord has established a monetary claim for the *Liquidated Damages* in the amount of \$587.50. I further find that the landlord is entitled to recover their filing fee of \$100.00, for a total entitlement of **\$1862.50**. The security deposit held by the landlord will be off-set from the award made herein.

As a result of the above the tenant's application is rendered **dismissed**.

Calculation for monetary order

Landlord's total award	1862.50
<i>Minus security deposit held in trust</i>	<i>-587.50</i>
Monetary Order / landlord	1275.00

Conclusion

The tenant's application is dismissed. The landlord's application in compensable part is granted.

I Order the landlord to retain the security deposit of \$587.50 in partial satisfaction of their claim, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$1275.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding.

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 20, 2018

Residential Tenancy Branch