



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SURREY VILLAGE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for unpaid rent and liquidated damages, to retain the security deposit and/or pet damage deposit towards any compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and three agents for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing. The Landlord stated that they served the Tenant with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail. They provided the registered mail tracking number which is included on the front page of this decision.

The Tenant stated that when she went to pick up the registered mail package, the mail was no longer available as it had already been sent back to the Landlord. The Tenant submitted that it was likely around November 15, 2018 when she was able to pick up the registered mail.

The registered mail tracking information confirms that the mail was sent to the Tenant on October 22, 2018 and was returned to the sender on November 10, 2018. I find that the Tenant had time to claim the mail before it was returned and that she was duly served in accordance with Sections 88 and 89 of the *Act*.

Therefore, the Tenant’s request for more time to prepare for the hearing was denied. The Tenant also submitted evidence on the day of the hearing which was not served to the Landlord. As stated in the *Residential Tenancy Branch Rules of Procedure*, evidence from the respondent must be received at least 7 days prior to the hearing. As

such, the parties were informed that the Tenant's evidence will not be accepted and will not be considered as part of this decision. This decision is based on the testimony of both parties, as well as the Landlord's documentary evidence.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issues to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent?

Is the Landlord entitled to monetary compensation for liquidated damages?

Should the Landlord be allowed to retain the security deposit and pet damage deposit toward compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on June 1, 2018. Monthly rent of \$1,300.00 was due on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$650.00 was paid at the outset of the tenancy. The Landlord confirmed that they are still in possession of both deposit amounts.

The tenancy agreement was submitted into evidence by the Landlord and confirms the details as stated by the parties. The agreement was for a fixed term set to end on May 31, 2019.

The Landlord provided testimony that the Tenant gave them notice to end the tenancy on September 1, 2018. The letter, which was submitted into evidence, states that the Tenant will move out of the rental unit on or before October 1, 2018.

The Landlord stated that they conducted a move-out inspection with the Tenant on October 1, 2018 at 2:00 pm and this is when they received the keys to the rental unit back. They also provided testimony that when they received the Tenant's notice to vacate, they informed her that she would be responsible for October 2018 rent as due on October 1, 2018, and possibly additional months as well.

The Landlord has applied for compensation for October 2018 rent in the amount of \$1,300.00. The Landlord stated that they have ongoing advertisements running online for the rental building on approximately six different websites. They attempted to have a new tenant in the rental unit for October 2018 but were unable to secure a new tenant until November 1, 2018. They testified that they rented the unit for the same monthly rent amount that the Tenant was paying.

The Landlord stated that they received the Tenant's forwarding address on October 22, 2018. The Tenant stated that she provided her forwarding address a few days after moving out, in early October 2018.

The Tenant provided testimony that she moved out on September 30, 2018 and when she went to find an agent to conduct the move-out inspection with her, she was unable to. Therefore, the move-out inspection was not conducted until October 1, 2018.

The Landlord stated that the move-out inspection was arranged for October 1, 2018, as that was the day that Tenant was moving out, as stated in her notice to end the tenancy.

The Tenant was in agreement that rent was due on the first day of each month and stated that she usually paid on the last day of the previous month. She also noted that her notice to end the tenancy provided to the Landlord on September 1, 2018 stated that she would be moving out on or before October 1, 2018. She stated that she moved out on the last day of September 2018, meaning that the Landlord could have had a new tenant in the rental unit for October 1, 2018.

The Tenant also provided testimony that there was a leak in the ceiling of the rental unit when she first moved in that was not repaired during the tenancy. As such, she stated her belief that the Landlord was unable to re-rent the unit for October 2018 due to the time required to fix the leak prior to a new tenant moving in.

The Landlord submitted that the leak in the rental unit was present when the Tenant moved in and was fixed during the tenancy.

The Landlord is also seeking \$400.00 for a liquidated damages fee. Although the Landlord initially applied for a \$1,300.00 liquidated damages fee as noted in the tenancy agreement, they stated that this was an error and the liquidated damages fee is \$400.00. They stated that this is the estimated cost of re-renting the unit.

A clause in the tenancy agreement states that a liquidated damages fee will be charged to the tenant should the fixed term agreement be breached. This clause also states that the amount is based on the costs associated with re-renting the unit.

During the hearing, the Tenant stated that she is willing to have the liquidated damages fee of \$400.00 deducted from her security deposit.

Analysis

As the Landlord applied against the security deposit and pet damage deposit, I refer to Section 38(1) of the *Act*, which states that within 15 days of the later of the date the tenancy ends, or the forwarding address is provided in writing, a landlord must return the deposits or file a claim against them.

The Tenant stated that her forwarding address was provided in early October 2018 while the Landlord stated that it was October 22, 2018, the same day they applied for Dispute Resolution. In the absence of documentary evidence to confirm the date of receipt, I accept that it was provided on or around October 22, 2018 and therefore find that the Landlord applied within the 15 days provided for under the *Act*. As such, any monetary compensation awarded to the Landlord may be retained from the security deposit and/or pet damage deposit.

As for the Landlord's claim for rent for October 2018 in the amount of \$1,300.00, I refer to Section 45(2) which states the following:

- (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.

As such, I find that by ending the tenancy prior to the end of the fixed term, the Tenant was not in compliance with Section 45(2) of the *Act*. I also find that notice provided on September 1, 2018 would end the tenancy at the end of October 2018, as rent is due by the 1st of each month.

Section 7(1) of the *Act* states that when a party does not comply with the *Act*, they must compensate the other party for any losses that occur. By signing a fixed term tenancy agreement, the Tenant agreed to be responsible for the rent until the end of the fixed term. However, as stated in Section 7(2) of the *Act*, a party claiming a loss also has a duty to take reasonable steps to minimize their losses.

I accept the testimony of the Landlord that they attempted to find a new tenant for the unit for October 2018 but were unable to find a new tenant until November 1, 2018. I also find that reasonable steps to minimize their losses were taken by advertising the rental unit for the same monthly rent that the Tenant was paying.

Therefore, I find that the Tenant was not in compliance with the *Act* when she ended her fixed term tenancy early. Pursuant to Section 67 of the *Act*, I find that the Landlord is entitled to October 2018 rent in the amount of \$1,300.00.

As for the liquidated damages fee, the Tenant agreed during the hearing that the Landlord could retain this amount from the deposits. I also find that the Landlord is entitled to the liquidated damages fee.

A liquidated damages fee may be charged if the tenancy agreement is breached, such as ending a fixed term tenancy early. I accept the tenancy agreement submitted into evidence that confirms this was a fixed term tenancy.

I find the liquidated damages fee of \$400.00 to be a reasonable amount and likely to be an estimate of re-rental costs instead of a penalty, as outlined in the *Residential Tenancy Policy Guideline 4: Liquidated Damages*. The tenancy agreement provides for the liquidated damages fee and although the amount was noted in error as \$1,300.00, the Landlord clarified the amount as \$400.00. As such, I find that the Landlord is entitled to liquidated damages in the amount of \$400.00.

As the Landlord was successful with their Application for Dispute Resolution, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

The Landlord is granted a Monetary Order in the amount outlined below:

October 2018 rent	\$1,300.00
Liquidated damages	\$400.00
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$650.00)</i>
<i>Less pet damage deposit</i>	<i>(\$650.00)</i>
Total owing to Landlord	\$500.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$500.00** for rent owed for October 2018, liquidated damages, and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: December 05, 2018

Residential Tenancy Branch