



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This case involves a landlords' claim against their former tenants for compensation related to a placement fee (that is, liquidated damages) that resulted from the tenants ending the tenancy early. The landlords also seek compensation for the filing fee.

The landlords applied for dispute resolution under the *Residential Tenancy Act* (the "Act") on November 2, 2018, and I presided over a dispute resolution hearing on February 28, 2019. The tenants and the landlords' agent attended the hearing, and I gave them full opportunity to be heard, to present evidence, to make submissions, and to call witnesses. The parties did not raise any issue with the service of documents.

I have only reviewed and considered oral and documentary evidence that met the requirements of the Act's *Rules of Procedure*, to which I was referred, and that is relevant to the issues of the dispute.

Issues

1. Are the landlords entitled to compensation for liquidated damages and for advertising costs resulting from the tenants' early termination of a tenancy?
2. Are the landlords entitled to compensation for the filing fee?

Background and Evidence

The landlords' agent testified and confirmed that the tenancy commenced on October 1, 2018, but that the tenants moved in early on September 24, 2018. Monthly rent was \$2,000.00 and the tenants paid a security deposit of \$1,000.00, which the landlords

currently retain. The tenancy was to be for a fixed-term, ending September 30, 2019. A copy of the written tenancy agreement was submitted into evidence.

On October 16, 2018, the tenants gave notice to end the tenancy early. They moved out on October 19, and the agent was able to find new tenants for November 1. The agent completed the move in and move out Condition Inspection Report for the tenants, and took out an advertisement on Castanet, and completed another move in inspection for the new tenants.

The landlords claim for "placement costs" in the amount of \$850.00, which the agent testified covers the activities related to moving in, moving out, and again for the new tenants. They also claim \$42.50 for the online advertisement costs, and \$100.00 for the Residential Tenancy Branch filing fee. I note that the landlords' Monetary Order Worksheet lists the placement fee plus GST as totalling \$840.00, the Castanet ad cost of \$10.50, and the filing fee of \$100.00.

The tenant (A.P.) testified that he agreed with the facts regarding the move in and move out timelines, as described by the agent. But he (and presumably his wife, the co-tenant) disagreed with the landlords retaining the security deposit to pay for liquidated damages. He disagreed with the placement cost, or, the "cost of doing business." While he testified that he is willing to pay for the direct costs of finding a new tenant, such as advertising, he is not willing to relinquish their security deposit for other expenses.

He referred me to section E of the tenancy agreement addendum which refers to liquidated damages and a placement fee. The addendum, which was submitted into evidence, has as clause (e) the subject of liquidated damages, and it reads, in part:

If the tenant terminates the tenancy for any reason before the date specified, then the landlord shall charge and the tenant agrees to pay the sum of \$4000.00 for liquidated damages. Such sum may be deducted from the security deposit, if any security deposit is payable to the tenant after applicable charges are made against the security deposit, or otherwise collected. The liquidated funds shall be utilized to cover the landlord's cost of placement fees, rent reductions to re-rent the suite, cleaning repairs [. . .]

There is a space for an initial below and to the right of the above-noted clause in the addendum. No initials appear.

In his final submission and rebuttal, the agent stated that the tenants understood the potential cost of ending the tenancy early.

In their final submission, the tenant testified that they dispute the landlords' claim and referred me to three previous Residential Tenancy Branch arbitration decisions pertaining to liquidated damages, and the policy on liquidated damages.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the landlords claim that the tenants breached the tenancy agreement by ending the tenancy early, and as such are obligated, under the agreement's addendum, to pay the liquidated damages amount.

I note, however, that on page 2 of the tenancy agreement, clause 1.(2) states that "Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable."

This language reflects section 14 of the Act ("Changes to tenancy agreement"):

- (1) A tenancy agreement may not be amended to change or remove a standard term.
- (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

The addendum in this case includes an additional term regarding liquidated damages. From reviewing the copy of the addendum submitted into evidence, I find that the tenants did not initial the liquidated damages term. As such, the term regarding liquidated damages is unenforceable.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving their claim for liquidated damages (that is, the placement fee). I dismiss that aspect of their application without leave to reapply.

As the tenants did not dispute costs related to advertising the rental unit, I grant the landlord a monetary award of \$10.50, which may be withheld from the tenants' security deposit, in full satisfaction of this aspect of their claim.

Finally, as the landlords' application was largely unsuccessful, I dismiss their claim for compensation for the filing fee.

Conclusion

I grant the landlord a monetary award of \$10.50, which may be retained from the tenants' security deposit.

The landlords must return \$989.50 of the tenants' security deposit. In support of this decision I grant a monetary order to the tenants; this order may be served on the landlords (or their agent) and filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 28, 2019

Residential Tenancy Branch