



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KARAMAR APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 12, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- a monetary order for unpaid rent;
- to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agents, W.H. and B.T., attended the hearing at the appointed date and time and provided affirmed testimony.

W.H. testified that she served the Application and documentary evidence package to the Tenant by registered mail on April 11, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit any evidence in preparation for this hearing.

The parties were given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 and 72 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the fixed term tenancy began on July 1, 2018 and was meant to end on June 30, 2019. Rent in the amount of \$1,050 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$525.00 which the Landlord continues to hold. The Tenancy ended on September 28, 2019 after the Tenant moved out of the rental unit. The Landlord submitted a copy of the tenancy agreement in support.

The parties agreed that the Tenant provided the Landlord with written notice to end tenancy on August 30, 2018. The Tenant vacated the rental unit on September 28, 2019.

W.H. testified that the Landlord is seeking \$860.00 for liquidated damages. W.H. stated that the parties agreed at the start of the tenancy that if the Tenant was to end the fixed term tenancy early, that he would be responsible for paying the liquidated damages which represents the cost associated with re-renting the rental unit which includes; administration fees, paying a maintenance worker for anything that needs doing, as well as advertising the rental unit. W.H. testified that the Landlord has an advertisement that runs continuously.

W.H. stated that the Landlord is also seeking \$1,050.00 as the Landlord was unable to re-rent the rental unit until November 1, 2018, therefore the Landlord is seeking the lost rent for October 2018 as a result of the Tenant breaking the fixed term agreement by moving out early.

The Tenant testified that he made attempts at finding a roommate prior to providing his notice to end tenancy to the Landlord. The Tenant stated that the Landlord denied their application which resulted in the Tenant providing his notice. W.H. stated that the Landlord considered the roommate's Application; however, they were denied as they had a pet and the building was not pet friendly.

Analysis

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

According to the Residential Policy Guideline #4; 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. 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.

The Landlord is seeking \$860.00 for liquidated damages. W.H. testified that the liquidated damages clause covers the administration fees, paying a maintenance worker for anything that needs doing, as well as for advertising the rental unit. W.H. testified that the Landlord has an advertisement that runs continuously; therefore I find that there are no added costs associated with advertising the rental unit as a result of the Tenant ending his tenancy early. While there may be some administrative fees associated with re-renting the rental unit, the Landlord provided insufficient evidence to demonstrate what those costs are. The Landlord provided insufficient evidence to demonstrate that a maintenance worker was required to conduct any work in the rental unit and if so, these costs are typically deducted from the security deposit.

As such, I find that the Landlord provided insufficient evidence to demonstrate that the liquidated damages clause in the tenancy agreement in the amount of \$860.00 is genuine pre estimate of the loss at the time of the contract was entered into. Rather, I find that the clause constitutes a penalty, as it is extravagant in comparison to the greatest loss that could follow a breach; therefore, I render the clause unenforceable.

In light of the above, I dismiss the Landlord's claim to recover \$860.00 for liquidated damages without leave to reapply.

The Landlord is claiming \$1,050.00 as they were unable to re-rent the rental unit for the Month of October 2018 as a result of the Tenant ending the fixed term tenancy early.

According to the Residential Tenancy Policy Guideline #30 (the "Policy Guideline"); during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

I accept that the parties entered into a fixed term tenancy which was meant to end on June 30, 2019. The parties agreed that the Tenant provided his notice to end tenancy to the Landlord on August 30, 2018 indicating that the tenancy will end on September 30, 2018. I accept that the Landlord had advertised to re rent the unit up continuously; however, was unable to find a new tenant for the month of October 2018. I find that the Tenant was not entitled to end the fixed term tenancy early, therefore is responsible to pay rent for October 2018 in the amount of \$1,050.00.

Having been partially successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,482.54, which has been calculated as follows:

Claim	Amount
Rent October 2018	\$1,050.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$525.00</i>)
TOTAL:	\$625.00

Conclusion

The Tenant has breached the Act by ending the fixed term tenancy early. The Landlord is granted a monetary order in the amount of \$625.00. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of BC (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: May 07, 2019

Residential Tenancy Branch