



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWYND REAL ESTATE SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for alleged damage by the tenants to the rental unit, and for recovery of the filing fee paid for this application.

The landlord's agent, hereafter "landlord", attended the telephone conference call hearing; the tenants did not attend.

The landlord testified that they served each tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on May 8, 2019. The landlord provided the copies of the Canada Post Customer Receipt containing the Tracking Numbers to confirm this mailing. The tracking numbers are also recorded on the style of cause page of this Decision. The landlord submitted additionally that the registered mail envelopes had not been returned to them.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The hearing process was explained to the landlord and he was given an opportunity to ask questions about the hearing process. Thereafter, the landlord was provided the opportunity to present his evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the “Rules”); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order for monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the landlord shows that this tenancy began on February 1, 2019, for a fixed term ending on January 31, 2020, and that the monthly rent was \$1,450.00. The landlord submitted that the tenants vacated the rental unit on April 30, 2019. The written tenancy agreement shows that the tenants paid a security deposit of \$725.00 on January 14, 2019.

The landlord listed their monetary claim as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning	\$210.00
2. Leasing fee	\$735.00
3. Lost rent for May 2019, 9 days	\$420.00
4. Lost rent remainder of lease (\$50/month)	\$450.00
TOTAL	\$1,850.00

I note that the total is actually \$1,815.00.

The landlord’s additional relevant documentary evidence included, but was not limited to, a cleaning invoice, a leasing fee receipt for \$725.00, a subsequent written tenancy agreement for the new tenants, and a condition inspection report (“CIR”).

Cleaning-

The landlord testified that the tenants failed to attend the move-out inspection. The landlord submitted additionally that the rental unit required cleaning, as the tenants did not properly clean the rental unit prior to vacating.

The landlord referred to the receipt from a cleaning company.

Leasing fee-

As to the leasing break fee, the landlord submitted that they were requesting only \$735.00, although the written tenancy agreement allows the amount of \$2,900.00 as liquidated damages if the tenants ended the fixed term tenancy early. The landlord explained that the tenants agreed to liquidated damages, which was meant to cover costs of advertising and securing new tenants. The landlord referred to the leasing fee invoice in that amount.

Loss of rent revenue-

The landlord submitted that the tenants vacated the rental unit on April 30, 2019, without proper notice and before the end of the fixed term through January 31, 2020.

The landlord submitted that they diligently sought new tenants and were able to secure new tenants, beginning May 10, 2019, as shown by that new written tenancy agreement.

The landlord claims a loss of rent revenue for the first nine days of May, due to the inadequate notice from the tenants prior to the end of the fixed term.

Loss of rent for the remainder of the fixed term-

The landlord submitted that they initially advertised the rental unit as the same rent charged to the tenants; however, they were unsuccessful in doing so. The landlord submitted that he had showings, advertised and sent notices to relocation services to secure new tenants.

The landlord submitted that they had to drop the monthly rent asking price to \$1,400.00 in order to secure new tenants. The landlord claims the rent deficiency of \$50.00 per month for the balance of the fixed term.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires

that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

In light of the tenants' failure to appear to provide a rebuttal to the landlord's evidence, despite being duly served, I accept the landlord's undisputed evidence.

Cleaning-

As to the costs claimed by the landlord associated with cleaning, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged except for reasonable wear and tear.

I find the landlord submitted sufficient, unopposed evidence that the rental unit required cleaning as the tenants failed to leave the rental unit reasonably clean.

Upon examination of the invoice evidence submitted by the landlord and his oral evidence, I find the landlord's costs to be reasonable. I therefore find the landlord is entitled to a monetary award as claimed of \$210.00.

Leasing fee-

As to the leasing fee, RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement, in this case, the lease break fee, must be a genuine pre-estimate of 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. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the tenants.

In the case before me, I find the landlord submitted sufficient evidence to prove that the leasing fee they claimed was a genuine estimate of costs to re-rent the rental unit and I approve their claim for \$735.00.

Loss of rent for May; lost rent for remainder of lease-

Under section 45(2) of the Act, a tenant must give written notice to the landlord ending a fixed term tenancy at least one clear calendar month before the next rent payment is due and that is not earlier than the end of the fixed term. In this case, the written tenancy agreement shows the fixed term ended on January 31, 2020.

In the case before me, I accept that the tenants provided insufficient notice that they were ending the fixed term tenancy agreement prior to the end of the fixed term as they vacated the rental unit on April 30, 2019.

I find the tenants were responsible to pay monthly rent to the landlord until the end of the fixed term, subject to the landlord's requirement that they take reasonable measures to minimize their loss.

I find it reasonable that the landlord would be unable to find a new tenant immediately, but I find that they took reasonable and diligent steps to minimize their loss as new tenants were secured for May 10, 2019. I therefore find the landlord submitted sufficient evidence to support their claim for loss of rent revenue for May 1-9, 2019, and grant them a monetary award of \$429.03 ($\$1,450.00 \text{ monthly rent} \times 12 \text{ months} = \$17,400.00$ yearly rent $\div 365 \text{ days} = \47.67 daily rate $\times 9 \text{ days} = \429.03).

Residential Tenancy Policy Guideline 3 states that as a general rule, a tenants' fundamental breach of a tenancy agreement includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy, or January 31, 2020 in this case.

This may include compensating the landlord for the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for the balance of the un-expired term of the tenancy.

As the landlord was compelled to reduce the monthly rent in order to secure new tenants, by \$50.00 per month, I find the landlord is entitled to be put in the same position had the tenants not breached the written tenancy agreement. I therefore find the landlord is entitled to the rent difference of \$50.00 per month for nine months, (May 2019 through January 2020) in the amount of \$450.00. I grant them a monetary award in this amount.

I grant the landlord recovery of their filing fee of \$100.00, due to their successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the landlord a monetary award of \$1,924.03, comprised of cleaning for \$210.00, a leasing fee of \$735.00, loss of rent revenue for May 1-9, 2019, for \$429.03, the rent difference for the balance of the fixed term for \$450.00 and the filing fee of \$100.00.

At the landlord's request, I direct them to retain the tenants' security deposit of \$725.00 in partial satisfaction of their monetary award of \$1,924.03.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1,199.03.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit of \$725.00 and they have been awarded a monetary order for the balance due, in the amount of \$1,199.03.

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: August 14, 2019

Residential Tenancy Branch