



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 10, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant, H.N., as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that she served her Application and documentary evidence package to the Tenant by registered mail on May 19, 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 testified that she served the Landlord with her documentary evidence by regular mail on August 13, 2019. The Landlord stated that she did not receive the Tenants' evidence package. The Tenant stated that her evidence consisted of emails between the parties, however, was willing to continue with the hearing in lieu of her evidence being considered.

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 damage to the rental unit, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
5. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the one year fixed term tenancy began on November 1, 2018 and was meant to end on October 31, 2019. The Tenants paid rent in the amount of \$2,300.00 which was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,150.00 which the Landlord continues to hold. The tenancy ended early on April 30, 2019.

The Landlord is claiming for monetary compensation relating to damage caused by the Tenants to the rental unit. The Landlord is claiming for the replacement of blinds in the amount of \$61.08, paint to cover a burn mark in the kitchen in the amount of \$25.33, and stain to cover up some damage to the cupboard in the amount of \$10.61. During the hearing, the Tenant agreed to pay for these damages for a combined total of \$97.02 to be paid to the Landlord.

The Landlord is also claiming for \$450.00 for liquidated damages as a result of the Tenants breaching their fixed term tenancy agreement by moving out early on April 30, 2019. The parties agreed that the Tenants provided their notice to end tenancy to the Landlord on March 11, 2019 with an effective vacancy date of April 30, 2019. The parties agreed to the liquidated damages clause at the start of the tenancy as it was included in the signed agreement between the parties. The Landlord provided a copy of the tenancy agreement in support.

In response, the Tenant stated that while she confirms that she was aware of the liquidated damages clause in the tenancy agreement, she feels as though she took an active part in conducting showings at the rental unit in attempt to assist the Landlord find a new suitable tenant to re-rent the rental unit. Furthermore, the Tenant stated that the Landlord made use of free advertising for the rental ads, therefore, she doesn't agree with the Landlord's claim for liquidated damages in the amount of \$450.00.

The Landlord stated that she secured a new tenant on March 17, 2019, signing a new tenancy agreement for a tenancy that was meant to commence on May 1, 2019. The Landlord stated that the new tenant contacted her on April 10, 2019 to notify her that they would be unable to rent the rental unit on May 1, 2019. The Landlord stated that she immediately re-posted her advertisement in an attempt to find a suitable tenant for May 1, 2019, however, was unable to do so.

The Landlord stated that she didn't secure a new suitable tenant until May 2, 2019, who took possession of the rental unit on June 1, 2019. As such, the Landlord stated that the rental unit was vacant for the month of May 2019. The Landlord is seeking monetary compensation in the amount of \$1,150.00 for the rental income that was lost as a result of the Tenant breaking the fixed term tenancy by moving out early, which resulted in the rental unit being vacant for the month of May 2019. The Landlord is also seeking \$100.00 in relation to utility bills for the month of May 2019 while the rental unit was vacant.

In response, the Tenant stated that she feels as though she had provided the Landlord with ample notice of her intent to end the tenancy. The Tenant stated that the Landlord should have been able to re-rent the rental unit for May 1, 2019, therefore, she doesn't agree with the Landlord's claim for loss of rent and utilities for the month of May 2019.

If successful, the Landlord is also seeking the return of the \$100.00 filing fee paid to make the Application.

Analysis

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

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.

The Landlord is claiming for monetary compensation relating to damage caused by the Tenants to the rental unit in the amount of \$97.02. During the hearing, the Tenant agreed to pay for these damages. Therefore, I find that the Landlord is entitled to monetary compensation in the amount of \$97.02.

The Landlord is also claiming for \$450.00 for liquidated damages as a result of the Tenants breaching their fixed term tenancy agreement by moving out early on April 30, 2019. According to the Residential Tenancy 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. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include; a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach; if an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty; or, if a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

According to the Policy Guideline #30; during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties.

In this case, I accept that the parties agreed in advance to the damages payable in the amount of \$450.00, in the event of a breach of the tenancy agreement. I find that the Tenants were not entitled to end their fixed term tenancy early and have therefore

breached the tenancy agreement. I further find that the amount of damages agreed to at the start of the tenancy is reasonable genuine pre-estimate of the loss at the time the contract is entered into. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$450.00 for liquidated damages.

The Landlord stated that after the Tenant provided her notice to end tenancy on March 11, 2019, she secured a new tenant on March 17, 2019, signing a new tenancy agreement for a tenancy that was meant to commence on May 1, 2019. The Landlord stated that the new tenant contacted her on April 10, 2019 to notify the Landlord that they would be unable to rent the rental unit on May 1, 2019.

The Landlord stated that she immediately re-posted her advertisement in an attempt to find a suitable tenant for May 1, 2019, however, was unable to do so. As such, the Landlord stated that the rental unit was vacant for the month of May 2019. The Landlord is seeking monetary compensation in the amount of \$1,150.00 for the rental income that was lost as a result of the Tenant breaking the fixed term tenancy by moving out early which resulted in the rental unit being vacant for the month of May 2019. The Landlord is also seeking \$100.00 in relation to utility bills for the month of May 2019 while the rental unit was vacant.

According to the Section 16 of the *Act*,

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, I find that a new tenancy was created on March 17, 2019 once the Landlord signed a new tenancy agreement with the new tenant, which was meant to take effect on May 1, 2019. As such, I find that the Tenant is not responsible for the loss of rent and utilities for the month of May 2019. In light of the above, I dismiss the Landlord's claim for loss of rent and utilities without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find that the Landlord is entitled to a monetary award in the amount of \$647.02. The Landlord continues to hold the Tenants' security deposit in the amount of \$1,150.00. I find it appropriate in the circumstances to order that the

Landlord retain \$647.02 from the Tenants' security deposit in satisfaction of the claim. I order the Landlord return the remaining balance of \$502.98 to the Tenants.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$502.98, which has been calculated as follows:

Claim	Amount
Tenants' Security Deposit	\$1,150.00
Damages:	-\$97.02
Liquidated Damages:	-\$450.00
Filing fee:	-\$100.00
TOTAL:	\$502.98

Conclusion

The Tenants have breached the Act by ending the fixed term tenancy early as well as damaging the rental unit. The Landlord has been compensated in accordance with the legislation and policy guidelines. The Tenants are granted a monetary order in the amount of \$502.98, which represents the remaining portion of their security deposit after deductions. The order should be served to the Landlord 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: September 4, 2019

Residential Tenancy Branch