



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI COMMERCIAL OKANAGAN TD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's agent, TP ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord company named in this application and that he had authority to represent it and the owner of the rental unit.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on June 26, 2019, by way of registered mail to the tenants' forwarding address provided in a letter to the landlord on June 5, 2019. The landlord provided a copy of this letter. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 1, 2019, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on September 2, 2018 and ended on June 5, 2019. Monthly rent in the amount of \$1,050.00 was payable on the first day of each month. A security deposit of \$525.00 and a pet damage deposit of \$525.00 were paid by the tenant and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement for a fixed term from September 2, 2018 to August 31, 2019. Move-in and move-out condition inspections and reports were completed for this tenancy. The tenant did not attend the move-out condition inspection and a "Notice of Final Opportunity to Schedule a Condition Inspection" was not provided by the landlord to the tenant. No written permission was given by the tenant to the landlord to keep any part of his deposits. An application to retain the deposits was made by the landlord on June 20, 2019.

The landlord seeks a loss of rent of \$525.00 from June 1 to 15, 2019. He explained that the tenant breached the fixed term tenancy agreement, failed to pay rent, a notice to end tenancy was provided for unpaid rent, and the tenant did not give notice when he moved out. The landlord claimed that the unit was re-rented to a new tenant on June 15, 2019. He said that an advertisement for re-rental was posted and he provided the receipt for same. He stated that an occupant in the same rental building moved to this rental unit.

The landlord also claims for liquidated damages of \$600.00 and to recover the \$100.00 filing fee paid for this application. The landlord said that clause 5 of the parties' written tenancy agreement provides for liquidated damages, which is not a penalty. He stated that he does not know the exact breakdown for this amount and how it was decided by the owner. He said that it was probably for the cost of advertising the rental unit and the new tenant placement fee from the property management company of up to \$500.00.

Analysis

Unpaid Rent

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenant vacated the rental unit on June 5, 2019. He did not provide notice of when he was vacating and did not pay any rent to the landlord for June 2019. I accept the landlord's testimony that he was unable to re-rent the unit until June 15, 2019, thereby suffering a half-month rental loss of \$525.00. I find that the landlord made best efforts to mitigate damages by renting the unit as soon as possible. Therefore, on a balance of probabilities and for the reasons stated above, I find that the landlord is entitled to \$525.00 in rent from June 1 to 15, 2019.

Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. 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. I find that the cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times.

Although the tenant vacated the rental unit prior to the end of the fixed term on August 31, 2019, I find that the landlord did not show how the \$600.00 claimed for liquidated damages in clause 5 of the tenancy agreement was a genuine pre-estimate of the loss. The landlord was unable to provide a breakdown for this number or to show how it was a genuine pre-estimate when the tenancy agreement was signed. Therefore, on a balance of probabilities and for the reasons stated above, I dismiss the landlord's claim of \$600.00 for liquidated damages without leave to reapply.

As the landlord was only partially successful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's deposits totalling \$1,050.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$525.00 in full satisfaction of the monetary award for the loss of half of June 2019 rent.

I order the landlord to return the tenant's pet damage deposit of \$525.00 to the tenant within 15 days of receiving this decision. The tenant is provided with a monetary order for same. Although the tenant did not apply for the return of his deposits, I am required to consider them under Residential Tenancy Policy Guideline 17, when the landlord has applied to retain them.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$525.00 in full satisfaction of the monetary award.

I issue a monetary order in the tenant's favour in the amount of \$525.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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.

The remainder of the landlord's application is dismissed without leave to reapply. 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: October 03, 2019

Residential Tenancy Branch