



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOUNTAIN TOWN PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Landlord: MNR, MNDC-S, FFL
Tenant: MNDC, FFT

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The landlord originally filed their application pursuant to the *Residential Tenancy Act* (the Act) on June 25, 2019, and subsequently amended, for Orders as follows;

1. A monetary Order for loss (liquidated damages) – Section 67
2. A monetary Order for Unpaid rent and utilities – Section 67
3. An Order to keep the security deposit as set off – Section 38
4. An Order to recover the filing fee for this application - Section 72.

The tenant originally filed their application August 29, 2019 for Orders as follows:

5. A monetary Order for loss – Section 67
6. An Order to recover the filing fee for this application - Section 72.

The applicant tenant was provided with a copy of the Notice of a Dispute Resolution Hearing dated September 05, 2019 after filing their application. The tenant, however, did not attend the hearing set for today at 1:30 p.m. The phone line remained open for the duration of the hearing and was monitored throughout the entire time. The only party to call into the hearing was the landlord's representative / agent. The landlord testified they have not received an application for dispute resolution from the tenant nor have had other communication with the tenant subsequent to the landlord's filing their matter.

I accept the landlord's evidence the tenant was served with the landlord's application for

dispute resolution and notice of hearing as well as their evidence by registered mail as set out in their proof of service on the style of cause (title page). In the absence of the tenant the landlord was given opportunity to be heard, to present evidence and to make submissions. Prior to concluding the hearing the landlord acknowledged presenting all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed for loss of revenue, utilities, liquidated damages and the filing fee?

Background and Evidence

The undisputed evidence in this matter is as follows. The subject tenancy began February 01, 2019 as a written agreement with a “duration period” ending June 30, 2019. The hearing had benefit of the written agreement. It was highlighted within the hearing that the agreement does not address what may occur at the end of the “duration period”.

During the hearing I found the landlord’s agreement (“Short Term Occupancy Agreement for Property Rental”) aptly met requirements of a tenancy agreement as defined in the Act, and in the least satisfied me that the landlord granted the tenant a Licence to Occupy. The written agreement states that a monthly “occupation fee” was payable in/for a month in the amount of \$1600.00, although it must be noted the agreement does not indicate when it is due. At the outset of the tenancy the landlord collected, effectively, a security deposit in the amount of \$1000.00 which the landlord retains in trust.

The tenancy ended May 15, 2019 upon the tenant vacating the rental unit and advising the landlord of their departure via email, all on the same date. The landlord testified the tenant had satisfied the occupation fee/rent to the end of May 2019.

The landlord testified they conducted a *move in* condition inspection, however did not conduct a *move out* inspection with the tenant. Regardless, the landlord testified they found no damage to the unit.

Landlord’s application

The landlord testified they acted on the tenant’s email notice and advertised the rental unit for the months of June and July 2019. The landlord testified they placed an advertisement on a local rental site, however they were unable to re-rent it for June

2019, the last month of the tenancy agreement. The landlord submitted a copy of the advertisement stating it was placed on May 24, 2019. The landlord seeks loss of revenue equivalent to the rent for June 2019, \$1600.00. The landlord further seeks gas and electrical utilities left unpaid, and to the end of June 2019 in the sum of \$125.13, for which the landlord submitted the utilities invoices.

In addition, the landlord seeks *liquidated damages* of \$1000.00 pursuant to the liquidated damages clause within the agreement. The tenant signed the contractual agreement in this matter including their consent to the landlord's clause of the pre-estimate of administrative costs of \$1000.00 for re-renting the unit in the event the tenant breached the agreement and ended the tenancy earlier than the terms afforded by the agreement.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's application

The tenant did not attend their own hearing and as a result their application is **dismissed**. As the landlord did not receive the tenant's claim and was not served with the tenant's application, and further was not aware the tenant made an application, I am dismissing the tenant's application with leave to reapply.

Landlord's claim

On balance of probabilities I find the agreement between the landlord and the tenant satisfies it was a fixed term agreement ending June 30, 2019. I find that a tenant who signs a fixed term agreement is responsible for the rent to the end of the fixed term. But moreover, I find that **Section 44** of the Act deals with how a tenancy ends and that it states it ends only if it complies with one or more of the methods prescribed therein. In summary, a tenant notifying the landlord by email on the day of their departure is not in compliance with Section 44 of the Act. In this matter, I find that a legal Tenant's Notice to vacate given in May 2019 would legally have taken effect on June 30, 2019. As a result, I find that the tenancy legally ended June 30, 2019 and the landlord is owed rent for June 2019 in the amount of **\$1600.00**.

Residential Tenancy Policy Guidelines respecting *Liquidated Damages* state that in order for a landlord's claim of *Liquidated Damages* to be enforceable, it must be a *genuine pre-estimate of loss at the time the contract is entered into*. If the amount for liquidated damages is deemed extravagant in comparison to the greatest loss that would be incurred by the landlord to re-rent the unit, the liquidated damages clause may be interpreted as a penalty or unconscionable, and therefore unenforceable in legal proceedings

The landlord's claim is that the *Liquidated Damages* charge is a genuine pre-estimate to compensate them for the *owner's costs of re-renting the property*. I find that the landlord has not presented evidence supporting costs of the landlord/owner to re-rent the property. But moreover, I find that the limited evidence submitted respecting the landlord's advertising does not support \$1000.00 as a likely genuine pre-estimate of the *owner's costs of re-renting the property*. As a result, I find the agreement's clause respecting *Liquidated Damages* as extravagant and therefore a penalty, thus invalid and unenforceable. **I dismiss** this portion of the landlord's claim for liquidated damages, without leave to reapply.

I find that the landlord has submitted sufficient evidence supporting that the tenant owes the gas and electrical utility to the legal end of the tenancy in the sum amount of **\$125.13**. I further find that the landlord is entitled to recover their filing fee of \$100.00.

Calculation for a monetary Order follows. The security deposit held by the landlord will be off-set from the award made herein.

Rent to June 30, 2019	\$1600.00
Utilities to June 30, 2019	\$125.13
Filing fee	\$100.00
<i>Minus security deposit held in trust</i>	<i>-\$1000.00</i>
Monetary Order to landlord	\$825.13

I Order that the landlord retain the security deposit of \$1000.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$825.13**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord's application in its compensable parts is granted. The landlord is given a monetary order in the above terms.

This Decision is final and binding.

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 08, 2019

Residential Tenancy Branch