



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, MNDC-S, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to retain the tenants' security deposit and pet damage deposit; and
- recovery of the filing fee.

The landlords' agents (landlords) attended the hearing; however, the tenants did not attend.

The landlord stated they served both tenants with their application for dispute resolution and Notice of Hearing by registered mail on December 20, 2019. The landlords provided the Canada Post Customer Receipts containing the Tracking Numbers to confirm this mailing. Those numbers are listed on the style of cause page in this Decision.

I accept the landlords' evidence that the tenants were served notice of this hearing in a manner complying with section 89 of the Act and the hearing proceeded in the tenants' absence.

The landlords were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the landlords' submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the landlords and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to compensation from the tenants, to keep the tenants' security deposit and pet damage deposit to offset a monetary award, and recovery of the filing fee?

Background and Evidence

The written tenancy agreement submitted by the landlords shows that the tenancy began on September 1, 2019, was for a fixed term through June 30, 2020, that monthly rent was \$1,850 and the tenants paid a security deposit and a pet damage deposit of \$925 each.

The undisputed evidence was that the tenants vacated the rental unit on or before the end of November, 2019.

The landlords' application requested a monetary order in the amount of \$11,200, as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent owing	\$10,175
2. Liquidated damages	\$925
3. Filing fee	\$100
TOTAL	\$11,200

Rent owing –

In support of their application, the landlords submitted that the tenants were obligated to pay rent through the end of the fixed term, in this case June 30, 2020. Instead, the tenants gave notice and ended the tenancy on or before November 2019. The landlord submitted that this insufficient notice caused a loss of rent revenue for December 2019,

January, February, March, and April, 2020, in the amount of \$1,850 each, and half a month's rent for May 1-15, 2020, for \$925.

The landlords submitted that they began advertising the rental unit immediately, by mid-November 2019, on multiple on-line advertising sites, their own and company websites, and through their extensive contacts with other property managers in the area. Despite their efforts, according to the landlords, they were unable to secure new tenants until May 15, 2020.

The landlords explained that the tenancy was on a fixed term basis, as the owners planned on returning and moving back into the fully furnished home, which is why the tenants were required to leave by June 30, 2020. The landlords submitted that the tenants knew and understood this reason, which was fine with them, as they were listing their house for sale, and needed a shorter term rental accommodation.

The landlords said that it was extremely difficult to find other tenants who wanted the rental unit for such a limited, fixed term. It was only after one of the owners died, the agents were told they could list the property for a longer term, as the surviving owner no longer wanted to move back into the home. When this happened, the rental unit was rented.

The landlords also said that they entertained offers of paying a lower rent, but that still did not result in the rental unit being re-rented.

The landlords submitted they are entitled to the loss of rent revenue due to the tenants' breaking the terms of the fixed term agreement.

The landlords submitted copies of their advertisements listing the rental unit on different forums.

Liquidated damages-

The landlords submitted that the tenants owe the amount of \$925 as liquidated damages due under clause 4.16 of the written tenancy agreement, as they vacated the rental unit prior to the end of the fixed term.

The landlord explained that the liquidated damages portion of the tenancy agreement is intended to pay for costs associated with re-renting the rental unit and was not a penalty.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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 landlords here, has the burden of proof to substantiate their claim on a balance of probabilities.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Rent owing -

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, 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.

On the basis of the undisputed evidence, I find that the tenants breached the terms of their written tenancy agreement by ending the tenancy before June 30, 2020. I find the tenants are liable to the landlords for monthly rent under the terms of the tenancy agreement, subject to the landlords' obligation to minimize their loss.

I have reviewed the landlords' documentary evidence and find that they met their obligation to minimize their loss. I find the advertisements submitted by the landlords

substantiated that they quickly and consistently advertised the rental unit, and were not successful until May 15, 2020, when a new tenancy began.

I find the landlords were in a unique situation in mitigating their loss, as they were only able to offer a fixed term through June 30, 2020 for the rental unit, as the landlords were to return and move back in the month following. I acknowledge that on a balance of probabilities this kept the landlords from re-renting earlier; however, on the basis of the undisputed evidence, I find the tenants were well aware of this situation when they agreed to the fixed term through June 30, 2020.

Due to the above, I find the landlords have established a monetary claim of \$10,175, for a loss of rent revenue of \$1,850 for the months of December 2019, January, February, March, and April 2020, each, and \$925 for May 1-15, 2020.

Liquidated damages-

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement 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.

In this case, I find the written and signed tenancy agreement required that the tenants pay a liquidated damages fee of one half month's rent in the event the tenants ended the fixed term tenancy prior to the date mentioned, here June 30, 2020. I find the landlord submitted sufficient evidence to show that this term is intended to offset costs associated with procuring a new tenant. After reviewing this clause, I do not find the amount is unreasonable and I do not find it is a penalty. Therefore, I find the tenants are responsible for paying the liquidated damages of \$925 and I grant the landlords a monetary award in that amount.

I also grant the landlords recovery of their filing fee of \$100, due to their successful application.

Due to the above, I grant the landlords a monetary award of \$11,200, comprised of \$10,175 for loss of rent revenue, \$925 for liquidated damages, and the filing fee of \$100.00.

At their request, I direct the landlords to retain the tenants' security deposit of \$925 and their pet damage deposit of \$925 in partial satisfaction of their monetary award of \$11,200.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$9,350.

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 landlords' application for monetary compensation is granted, they have been authorized to retain the tenants' security deposit of \$925 and their pet damage deposit of \$925, and they have been awarded a monetary order for the balance due, in the amount of \$9,350.

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 26, 2020

Residential Tenancy Branch