



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1131493 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on April 20, 2019 and amended on April 22, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The corporate Landlords were represented by C.C., A.W., and S.R., agents. The Tenants attended the hearing on their own behalf. All in attendance provided affirmed testimony.

On behalf of the Landlords, C.C. confirmed that the Notice of Dispute Resolution Proceeding package and a subsequent evidence package were served on the Tenants by email. The Tenants acknowledged receipt. The Tenants testified the evidence upon which they intend to rely was served on the Landlords by email. The Landlords acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms the parties entered into a fixed-term tenancy that began on August 1, 2019 and was expected to continue to July 31, 2020. However, the parties agreed the Tenants vacated the unit on or about April 30, 2020. During the tenancy, rent in the amount of \$3,200.00 per month was due on or before the first day of each month. The Tenants paid a security deposit in the amount of \$1,600.00, which was returned to the Tenants.

The Landlords' claim was set out in a Monetary Order Worksheet dated May 14, 2020. First, the Landlords claim \$6,400.00 for unpaid rent due on March 1 and April 1, 2020. On behalf of the Landlord, C.C. testified that there were discussions about ending the tenancy early but that the Tenants would not agree to the Landlords' terms. As a result, it is the Landlords' position that the Tenants breached the tenancy agreement when they vacated the rental unit before the end of the fixed term.

In reply, the Tenants acknowledged rent was not paid as alleged. They testified that rent due on March 1, 2020 was not paid because they "clawed back" the amount paid as rent due on August 1, 2019. The Tenants characterized this payment as a deposit used to "secure" the tenancy because the Tenants did not move in until September 1, 2019. In response, C.C. referred to an email dated July 9, 2019 - before the tenancy began - which characterizes the payment as rent.

With respect to rent due on April 1, 2020 the Tenants testified they were justified in withholding rent because the property was sold. The Tenants also referred to a text message submitted into evidence which appears to be part of a discussion about terms upon which to end the tenancy. In response, C.C. confirmed the Tenants were never issued a notice to end tenancy based on the sale of the property and that the Tenants were entitled to remain in the unit until the end of the fixed term.

Second, the Landlords claim \$1,500.00 for liquidated damages for the Tenants' alleged breach of the tenancy agreement. Paragraph 5 of the tenancy agreement states:

If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$1500 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

[Reproduced as written.]

In reply, the Tenants disputed this aspect of the Landlords' claim. They testified they were asked to move and were given notices to end the tenancy although these documents were not specifically referenced during the hearing.

Third, the Landlords claim \$183.00 for what they characterized as an unnecessary service call relating to the fireplace in the unit. On behalf of the Landlords, C.C. testified the Tenants advised the fireplace had "exploded" and that glass had broken. The Landlords arranged a service call and were advised there was nothing wrong with the gas fireplace. A receipt in the amount claimed was submitted in support.

In reply, the Tenants testified they heard a bang and observed broken glass near the fireplace. They acknowledged it was reported to the Landlords but maintained they should not be held responsible for a service call in response to their concerns.

Fourth, the Landlords claim \$7.00 for a bank charge on a returned cheque the Tenants put a "stop payment" request on. The Tenants agreed to pay this item during the hearing.

Finally, the Landlords claim \$100.00 in recovery of the 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:

With respect to the Landlords' claim for \$6,400.00 for unpaid rent, I find that the fixed-term tenancy began on August 1, 2019 and was expected to continue to July 31, 2020. Although I accept there were communications about when the tenancy might end, I was referred to no agreement to end the tenancy before the end of the fixed term. The sale of the rental property did not have the effect of ending the tenancy. Rather, I find the Tenants vacated the rental unit on or about April 30, 2020 before the end of the fixed term and without notice to the Landlords. I reject the Tenants' assertion that the payment made for rent due on August 1, 2019 was merely a deposit to secure the rental property. I also reject the Tenants' assertion that they were entitled to retain rent due on April 1, 2020 because they had received a notice. I was referred to no such notice in the approved form.

In addition, section 26 of the *Act* confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. The Tenants acknowledged they did not pay rent. Therefore, I find the Landlords are entitled to a monetary award in the amount of \$6,400.00 for unpaid rent due on March 1 and April 1, 2020.

With respect to the Landlords' claim for \$1,500.00 for liquidated damages, Policy Guideline #4 states:

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.*
- *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.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.

A clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

[Reproduced as written.]

In this case, I find the Tenants breached the tenancy agreement by failing to pay rent when due on March 1 and April 1, 2020, and by vacating the rental property before the end of the fixed term. I find the liquidated damages clause is a genuine pre-estimate of the Landlords' losses and is not a penalty because the amount is reasonable in relation to the rent due each month (less than half). It is not oppressive. As noted above in Policy Guideline #4, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Accordingly, I find the Landlords are entitled to a monetary award for liquidated damages in the amount of \$1,500.00.

With respect to the Landlords' claim for \$183.00 for a service call relating to the fireplace in the unit, I find the Landlords are not entitled to recover this amount from the Tenants. I accept the evidence of the tenants who testified they heard a bang and observed broken glass. They appropriately reported the issue to the Landlords who decided to call someone to inspect the fireplace. The Landlords should bear this cost. To conclude otherwise would have a chilling effect on a tenant's obligation to report maintenance issues to a landlord. Therefore, I find that this aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$7.00 for a bank charge on a cancelled cheque, the Tenants agreed to pay this portion of the Landlords' claim. I grant the Landlords a monetary award in the amount of \$7.00.

Having been successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$8,007.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$6,400.00
Liquidated damages:	\$1,500.00
Cancelled cheque:	\$7.00
Filing fee:	\$100.00
TOTAL:	\$8,007.00

Conclusion

The Landlords are granted a monetary order in the amount of \$8,007.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (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: June 5, 2020

Residential Tenancy Branch