



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that the Dispute Resolution Package and the evidence the Landlord submitted with the Application were sent to each Tenant, via registered mail, although she cannot recall the date of service. The Tenant stated that he and the co-tenant who did not attend this hearing received the above documents. As the Tenant acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

On September 14, 2020 the Tenant submitted one page of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Agent for the Landlord on September 14, 2020. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for costs associated to an early end to this fixed term tenancy and/or to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the tenancy began on March 01, 2020;
- the tenancy was a fixed term, the fixed term of which ended on February 28, 2021;
- clause 3 of the addendum to the tenancy agreement declares that if the Tenant moves out of the unit prior to the end of the fixed term tenancy, the Tenant will be responsible for “any actual & reasonable loss and expenses incurred by the Landlord” such as agent fees, change of locks, forfeit damage deposit, clean up charges, and rent loss;
- the Tenant agreed to pay monthly rent of \$855.00 by the first day of each month;
- the Tenant paid a security deposit of \$427.50;
- on April 24, 2020 the Tenant provided written notice of her intent to vacate the rental unit on May 31, 2020;
- the Tenant vacated the rental unit by May 31, 2020; and
- the Tenant provided the Landlord with the name of the person who moved into the unit after it was vacated by the Tenant.

The Landlord is seeking compensation, in the amount of \$427.50, for “the time and effort to get a new tenant”. The Agent for the Landlord stated that he spent approximately 1 hour meeting with the “new tenant” to determining that person’s suitability as a tenant; 30-60 minutes meeting with the “new tenant” a second time to receive the tenancy application in person; and 60-90 minutes signing the contract with the “new tenant” on a third occasion.

The Tenant submits that the Agent for the Landlord has exaggerated the amount of time spent with the “new tenant”. He stated that when he and the Agent for the Landlord met to sign their tenancy agreement, they spent approximately 15 minutes discussing the agreement and another 45 minutes discussing issues not directly related to the tenancy.

The Agent for the Landlord stated that the Landlord paid the Agent for the Landlord a standard fee of ½ of one month’s rent (\$427.50) for entering into a new tenancy agreement, regardless of the time and effort it took to reach that agreement.

The Tenant and the Agent for the Landlord agree that the Landlord submitted no documentary evidence that establishes the Landlord paid \$427.50 to the Agent for the Landlord for entering into a tenancy agreement with the person who moved into the rental unit after it was vacated by the Tenant.

The Tenant submits that there is nothing in the agreement that declares the Landlord is automatically entitled to keep \$427.50 if the tenancy agreement is ended prematurely. He submits that clause 3 of the addendum to the tenancy agreement is vague.

The Agent for the Landlord stated that prior to the start of this tenancy she informed the Tenants that a fee of \$427.50 would be charged for replacing the Tenants if the fixed term tenancy was ended prematurely. The Tenant stated that prior to the start of this tenancy the Agent for the Landlord informed the Tenants that a fee of \$427.50 would be charged for “as a penalty” if the fixed term tenancy was ended prematurely.

The Tenant stated that his daughter had to move out of the rental unit prematurely for personal reasons.

Analysis

On the basis of the undisputed evidence, I find there is a clause in the addendum to the tenancy agreement that declares that the Tenant will be responsible for “any actual & reasonable loss and expenses incurred by the Landlord” if the Tenant moves out of the unit prior to the end of the fixed term tenancy, which includes losses such as agent fees, change of locks, forfeit damage deposit, clean up charges, and rent loss.

On the basis of the undisputed evidence, I find that the Landlord and the Tenants entered into a fixed term tenancy agreement, the fixed term of which ended on February 28, 2021; that the Tenants gave written notice to end this tenancy, effective May 31, 2020; and that the rental unit was vacated by May 31, 2020. As the Tenants clearly vacated the unit prior to the end of the fixed term tenancy, I find that the Tenants are responsible for “any actual & reasonable loss and expenses incurred by the Landlord” as a result of the early end to the tenancy, as per the aforementioned clause in the addendum.

In deciding this matter, I do not concur with the Tenant’s submission that the aforementioned clause is vague. Rather, I find it very clearly informs the Tenants that they will be responsible for “actual” and “reasonable” costs associated to re-renting the unit if they vacate the unit prior to the end of the fixed term tenancy.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulate that the claim is limited to what is stated in the application. In the Application for Dispute Resolution the Landlord clearly declares that the Landlord is claiming compensation of \$427.50 for the Agent for the Landlord's "time and effort to get a new tenancy to take over" the tenancy agreement. This claim is, therefore, limited to compensation for the "time and effort" it took to enter into a new tenancy agreement.

I specifically note that the Landlord did not declare on the Application for Dispute Resolution that the Landlord would be seeking to recover a flat fee of \$427.50 paid to the Agent for the Landlord as an administrative cost of finding a new tenant. As the Landlord did not clearly inform the other party that the Landlord would be seeking this administrative cost, that claim is not being considered at these proceedings.

On the basis of the testimony of the Agent for the Landlord, I find that she spent approximately 3 hours meeting with the person who moved into the rental unit after the unit was vacated by the Tenants and entering into a new tenancy agreement with that individual. Although the Tenant submits that the Agent for the Landlord has exaggerated the amount of time spent with this process, I find this to be a reasonable estimate of her time, given the explanation provided by the Agent for the Landlord.

I find it reasonable to conclude that the Landlord would have also spent 3 hours meeting with the person who moved into the rental unit after if it was vacated by the Tenants if the Landlord had not opted to use an agent to conduct this business. As the Landlord would not have needed to expend this time if the fixed tenancy had not ended prematurely, I find that the Landlord is entitled to reasonable cost associated to those efforts. I find that \$90.00 is reasonable compensation for the three hours it took to arrange a new tenancy, regardless of whether the time was spent by the Landlord or by a third party appointed by the Landlord. I therefore find that the Landlord is entitled to compensation of \$90.00 for the "time and effort" it took to enter into a new tenancy agreement.

Although I find that the Landlord's Application for Dispute Resolution has some merit, I find that the issues in dispute at these proceedings are relatively minor and could likely have been resolved by the parties without the need for a hearing. I therefore find that the parties must share the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$140.00, which includes \$90.00 for costs associated to finding a new tenant and \$50.00 in partial compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$140.00 from the Tenant's security deposit in full satisfaction of this monetary claim.

Based on these determinations I grant the Tenants a monetary Order for \$287.50, which represents the return of the remaining security deposit. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 24, 2020

Residential Tenancy Branch