



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Surfside Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation for damage under the Act in the amount of \$450.00, retaining the security deposit for this claim; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and two agents for the Landlord, R.G. and N.P. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed them in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on April 1, 2020, with a monthly rent of \$1,150.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$575.00, and no pet damage deposit.

The Agents said that the Tenant breached the fixed term tenancy agreement, and that the Landlord seeks \$450.00, which is the amount set out in the liquidated damages clause (#6) of the tenancy agreement. The Agents said:

There's a generic calculation that we use, based on staffing requirements and the costs of re-renting a unit. We do not include the potential of uncollected rent in our calculations. Our liquidated damages are \$450.00, as we can go as high as half a month's rent. We do not want to be punitive, but just have some funds to recover to re-rent the unit.

The liquidated damages clause in the Parties' tenancy agreement states:

6. **LIQUIDATED DAMAGES.** 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 \$450.00 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 further rental revenue losses that will remain unliquidated.

The Tenant said:

The Landlord's address was omitted from the tenancy agreement. This is a proper legal document, and I am asking that the application be dismissed on those grounds. See section 13 [(2)] (e) [of the Act] in this regard.

Section 13(2)(e) of the Act states:

13 (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

. . .

(e) the address for service and telephone number of the landlord or the landlord's agent;

The Agents said:

We had not noticed this, and we feel that the missing address has not made it difficult to serve documents or to contact us. It doesn't affect the section 6 liquidated damages clause. It was a clerical error. The Landlord's phone number was included on the tenancy agreement.

The Tenant said: "This is an all-encompassing legal document in British Columbia. Everything of legal pertinency on this document is relevant. Without their address, this shouldn't be allowed."

I advised the Parties in the hearing that I would consider the Tenant's argument in my considerations, but that I do not make decisions of this sort in the hearing, itself. As such, the Parties continued to give evidence.

The Tenant said:

I'm not contesting the issue of the liquidated damages, so much; it's a *bona fide* term in section 6 of residential tenancy agreement, but tenants have rights, as well. I was denied my right to quiet enjoyment. The issue here is that I had every legal right to end the tenancy early, because the right to quiet enjoyment was terminated.

The Agents said:

My opinion is that if he felt that his quiet enjoyment was being affected at that time, he had the opportunity for dispute resolution. He was a property manager; he knew that opportunity was before him. I have included in my evidence the tenant who lives there now who has not had a problem. We could go through dispute resolution, but as a landlord, which tenant has more rights? We would have welcomed sorting it out that way. But [the Tenant] chose to break his lease,

which is a separate issue. His real issue was with the noise, but he had the opportunity to deal with that in a different way.

The Tenant said:

Consider dispute resolution? I did voice my concerns to the Agent, [N.P.], and in an email to her and in a written letter to her about the never-ending noise above me. This noise was beyond anything reasonable. I finally received a final email from [N.P.] saying, basically, I'm just going to have to live with it, and that she spoke with the tenant, and she'll do everything she can. She's not doing her due diligence, didn't give a cautionary warning I elected to break the lease. Who wants to move after two months? I'd still be living there to this day, if not for the fact of that noise. I did not want to have to move after such a short stay. I had to pay a penalty on internet, because I had a two-year contract, and I've been denied my right to quite enjoyment while living in that building.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Regarding the Tenant's argument that the Landlord neglected to include their address for service on the tenancy agreement, I find that the Tenant has not provided sufficient evidence to establish the relevance of this matter to the Landlord's Application. I find that the absence of the Landlord's address in the tenancy agreement is not fatal to the validity of the agreement. Therefore, I reject the Tenant's argument in this regard as irrelevant.

Further, I agree with the Agents that the Tenant could have applied for dispute resolution, seeking an order for the Landlord to provide him with quiet enjoyment of the rental unit; however, the Tenant did not apply for such an order. There is no evidence before me that the Tenant has an order of the Director authorizing him to break the fixed-term tenancy agreement on the basis of a breach of quiet enjoyment; therefore, I find that this matter is irrelevant to the issues before me.

After considering all the evidence before me in this matter, I find that the Landlord is entitled to recover \$450.00 from the Tenant, pursuant to the liquidated damages clause of the tenancy agreement, and pursuant to section 67 of the Act. Given the Landlord's successful Application, I also award them with recovery of the \$100.00 Application filing

fee from the Tenant, pursuant to section 72 of the Act, for a total award of **\$550.00**.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$575.00 in full satisfaction of the Landlord's monetary claim.

The Landlord is authorized to retain \$550.00 of the Tenant's \$575.00 security deposit, in full satisfaction of the monetary award. The Tenant is granted with a Monetary Order of \$25.00 from the Landlord for recovery of his remaining security deposit.

Conclusion

The Landlord is successful in their Application for \$550.00 from the Tenant, as the Landlord provided sufficient evidence to meet their burden of proof in this matter on a balance of probabilities.

The Landlord is authorized to retain \$550.00 of the Tenant's \$575.00 security deposit in complete satisfaction of the monetary award. The Landlord is directed to return the remaining \$25.00 to the Tenant as soon as possible. I grant the Tenant a Monetary Order of \$25.00 from the Landlord as recovery of the remaining security deposit.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 3, 2020

Residential Tenancy Branch