



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENNINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNRL, MNDCL, 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 unpaid rent, for a monetary Order for damage to the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on March 24, 2021 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in March of 2021 were sent to each Tenant, via registered mail, at the service address noted on the Application. She stated that the service address was provided by the Tenants as a forwarding address on January 31, 2021.

The Agent for the Landlord cited two Canada Post tracking numbers that corroborates her testimony regarding service of documents. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however neither Tenant appeared at the hearing. As the aforementioned documents have been served to the Tenants, the hearing proceeded in the absence of the Tenants and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. She affirmed that she would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Agent for the Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. She affirmed she would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to liquidated damages and compensation for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on September 01, 2020
- the parties signed a fixed term tenancy agreement, the fixed term of which ended on August 31, 2021;
- the Tenants agreed to pay monthly rent of \$3,200.00 by the first day of each month;
- the Tenants still owe \$33.73 in rent for January of 2021;
- the Landlord is claiming compensation for unpaid rent from January of 2021, in the amount of \$33.73;
- on January 01, 2021 the Tenants sent the Landlord an email, in which they declared they were ending the tenancy on January 20, 2021;
- the rental unit was vacated on January 31, 2021;
- the Landlord was able to re-rent the unit for February 12, 2021;
- no rent was paid for February of 2021 by the Tenants;
- the Landlord is seeking pro-rated rent for the period between February 01, 2021 and February 11, 2021, in the amount of \$1,257.31;
- there is a clause in the tenancy agreement that requires the Tenants to pay liquidated damages of \$1,600.00 if the Tenants end the tenancy prior to the end of the fixed term; and
- the Landlord opted to only claim a pro-rated portion of the liquidated damages, in the amount of \$933.31.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenants entered into a fixed term tenancy, the fixed term of which ended on August 31, 2021; that the Tenants agreed to pay monthly rent of \$3,200.00 by the first day of each month; and that the Tenants still owe \$33.73 in rent for January of 2021.

Section 26 of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due. As the Tenants still owe rent of \$33.73 for January of 2021, I find the Landlord is entitled to compensation in that amount.

On the basis of the undisputed evidence, I find that on January 01, 2021 the Tenants sent the Landlord an email, in which they declared they were ending the tenancy on January 20, 2021, and that they vacated the unit on January 31, 2021. I find that the Tenants failed to comply with section 45(2) of the *Act* when the Tenants gave notice to end this fixed term tenancy on a date that is earlier than the end of the fixed term of the tenancy.

I find that the Landlord made reasonable efforts to locate a new tenant for February of 2021 and that they were able to re-rent the unit for February 12, 2021. In spite of the efforts to mitigate their loss, I find that the Landlord experienced a loss of revenue for the first 11 days in February of 2021, for which they are entitled to compensation of \$1,257.19, as the Landlord would not have experienced this loss of revenue if the Tenants had not prematurely ended the tenancy.

On the basis of the undisputed evidence, I find there is a liquidated damages clause in the tenancy agreement that requires the Tenants to pay \$1,600.00 to the Landlord if they prematurely end this fixed term tenancy. 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 of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$1,600.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances.

Although the Landlord is entitled to compensation of \$1,600.00 for liquidated damages, the Landlord has only claimed \$933.31 and I grant that amount to the Landlord.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,324.23, which includes \$33.73 for rent from January of 2021; \$1,257.19 in lost revenue; \$933.31 in liquidated damages; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$2,324.23. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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: August 18, 2021

Residential Tenancy Branch