



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 520 MOODY PARK RENTALS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCL-S, FFL, MNSDS-DR, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit and pet damage deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution in which they applied to recover double the pet damage and security deposit and to recover the fee for filing an Application for Dispute Resolution.

The male Tenant stated that on December 23, 2021 or December 24, 2021 the Tenants' Dispute Resolution Package was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and I therefore find they have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

The male Agent for the Landlord stated that on January 14, 2022 the Landlord's Dispute Resolution Package was sent to each Tenant, via registered mail. The Tenants acknowledged receipt of these documents and I therefore find they have been served in accordance with section 89 of the *Act*.

On January 04, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The male Agent for the Landlord stated that this evidence was served to the

Tenants, via registered mail, on January 14, 2022. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In July of 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The male Agent for the Landlord stated that this evidence was mailed to the Tenants on July 29, 2022. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

In April, May, and July of 2022 the Tenants submitted additional evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was mailed to the Landlord on August 01, 2022. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for liquidated damages and/or lost revenue? Should the security and pet damage deposit be retained by the Landlord or returned to the Tenants?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy was a fixed term tenancy, the fixed term of which began on September 01, 2021 and ended on August 31, 2022;
- the Tenants agreed to pay monthly rent of \$1,850.00 by the first day of each month;
- the Tenant paid a security deposit of \$925.00;
- the Tenant paid a pet damage deposit of \$925.00;

- on November 24, 2021 the Tenant sent the Landlord a letter informing the Landlord that the Tenants were vacating the rental unit for various reasons outlined in the letter;
- the keys to the unit were returned with the letter sent on November 24, 2021;
- prior to sending the letter of November 24, 2021, the Tenants did not inform the Landlord that they were breaching a material term of the tenancy, although they did inform that of a leaking sink; and
- on January 24, 2022 a Residential Tenancy Branch Arbitrator concluded that the letter sent on November 24, 2021 did not constitute sufficient service of a forwarding address.

The male Tenant stated that they fully vacated the rental unit on November 20, 2021. The female Agent for the Landlord stated that the Landlord realized the rental unit had been vacated on November 26, 2021, when they received the letter of November 24, 2021

The male Agent for the Landlord stated that the Landlord began advertising the rental unit on a popular website within a few days of learning the rental unit had been vacated and that they were unable to find a new tenant until January 01, 2022. The Tenants made no submissions regarding the effort to re-rent the unit.

The Landlord is seeking compensation for liquidated damages of \$500.00. The tenancy agreement stipulates that if the Tenant gives notice to end the tenancy and the Tenant vacates the rental unit prior to the end of the fixed term, the Tenant will pay liquidated damages of \$500.00. The male Tenant stated that he considered the liquidated damages clause to be a “reasonable exit fee”.

The Tenant is seeking the return of double the security deposit and pet damage deposit.

The Landlord stated that a forwarding address for the Tenant was not received until the Tenant served them with this Application for Dispute Resolution, which was the Landlord received on January 04, 2022.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy, the fixed term of which was to end on August 31, 2022.

On the basis of the undisputed evidence, I find that the Tenants agree to pay monthly rent of \$1,850.00 by the first day of each month.

On the basis of the undisputed evidence, I find that on November 24, 2021 the Tenants mailed the key to the rental unit to the Landlord and informed the Landlord, in writing, that the rental unit was being vacated on November 24, 2021. On the basis of the undisputed evidence, I find that the rental unit was vacated by November 24, 2021. I therefore find that the tenancy ended on November 24, 2021, pursuant to section 44(1)(d) of the *Act*.

Section 45(2) of the *Residential Tenancy Act (Act)* allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

On the basis of the undisputed evidence, I find that the Tenants did not inform the Landlord, in writing, that the Landlord had breached a material term of the tenancy prior to the Tenants vacating the unit on November 24, 2021. I therefore find that the Tenants did not have the right to end the fixed term tenancy pursuant to section 45(3) of the *Act*.

I find that the Tenants failed to comply with section 45(2) of the *Act* when the Tenants ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement, which was August 31, 2022. I therefore find that the Tenants must compensate the Landlord, pursuant to section 67 of the *Act*, for any losses the Landlord experienced as a result of the Tenants vacating the unit prior to the end of the fixed term of the tenancy.

I find that the Landlord made reasonable efforts to re-rent the unit but, given the late notice, the Landlord was unable to find a new tenant until January 01, 2022. I find that Landlord would not have experienced the lost revenue experienced in December of 2021 if the tenancy had continued until the end of the fixed term of the tenancy. I therefore find that the Tenant must pay \$1,850.00 to the Landlord for the loss of revenue that the Landlord experienced in December of 2021.

I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenants, that requires the Tenants to pay \$500.00 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 \$500.00 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. On this basis, I find that the Landlord is entitled to collect liquidated damages of \$500.00.

On the basis of the undisputed evidence, I find that on January 24, 2022 a Residential Tenancy Branch Arbitrator concluded that the letter the Tenant sent on November 24, 2021 did not constitute sufficient service of a forwarding address. As that issue has already been determined, the principle of *res judicata* precludes me from re-considering that issue. In reaching this conclusion I was guided by *McIntosh v. Parent*, 55 O.L.R. 553 (Ont. C.A.) at p. 555, where the court defined the principle of *res judicata* as follows:

Any right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be-retried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right, question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgement remains.

On the basis of the undisputed evidence, I find that the Tenants did not provide that Landlord with a forwarding address until they served the Landlord with this Application for Dispute Resolution. On the basis of the Landlord's submissions, I find that the Landlord received a forwarding address for the Tenant on January 04, 2022.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

I find that the Landlord complied with section 38(1) of the *Act*, as the Landlord filed their Application for Dispute Resolution on January 04, 2022 which is the day they received a forwarding address for the Tenants.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord complied with section 38(1) of the *Act*, I dismiss the Tenants' application for the return of double the security/pet damage deposit.

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

I find that the Tenants have failed to establish the merit of the Tenants' Application for Dispute Resolution and I dismiss their application to recover the fee for filing the Application for Dispute Resolution.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

The Landlord has established a monetary claim, in the amount of \$2,450.00, which includes \$1,850.00 in lost revenue, \$500.00 in liquidated damages and \$100.00 in compensation for the fee paid to file an Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit and pet damage deposit of \$1,850.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order **for the balance** \$650.00. 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 16, 2022

Residential Tenancy Branch