



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 11, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agent confirmed receipt of the Tenant's Application and documentary evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Landlord's Agent submitted evidence to the Residential Tenancy Branch in response to the Tenant's Application. The Landlord's Agent stated he sent a copy of the evidence to the Tenant by Canada Post Registered Mail on December 2, 2022. The Tenant was unsure if he or a house guest had received the evidence package. The Landlord's agent submitted the registered mail receipt and tracking information in support of the mailing. Pursuant to Section 88 and 90 of the Act, documents served in this fashion are deemed received by the Tenant five days later, on December 7, 2022.

The Parties were given an 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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on December 22, 2017. The parties entered into a new two-year fixed term tenancy agreement on December 1, 2019. The Tenant was required to pay rent in the amount of \$2,850.00 and \$250.00 for utilities which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,400.00 which has since been returned to the Tenant. The parties stated that the mutually agreed to end the tenancy early on July 31, 2021. The parties agreed that the Tenant vacated the rental unit on July 14, 2021.

The Tenant is claiming compensation in the amount of \$4,750.00. The Tenant stated that he provided the Landlord with his notice to end tenancy on May 26, 2021 to end the tenancy effective July 15 or 31, 2021. The Tenant stated that the parties mutually agreed to end the fixed term tenancy on July 31, 2021. The Tenant stated that he vacated the rental unit on July 14, 2021.

The Tenant stated that he paid full rent and utilities for July and August 2021 to the Landlord. The Tenant stated that the Landlord did not mitigate their loss when they listed the rental unit for rent in the amount of \$3,500.00 which is much higher than what the Tenant had been paying. The Tenant stated that there was only one showing during June 2021. The Tenant stated that the Landlord reduced the listed rent amount to \$3,200.00 in July 2021. As such, the Tenant feels as though the Landlord did not mitigate their loss and should not be entitled to the payment of rent and utilities while the Tenant was not occupying the rental unit. For clarity, the Tenant is seeking reimbursement in the amount of \$2,850.00 for August 2021 rent, \$1,425.00 for July 15-31, 2021 rent, and \$375.00 utilities for half of July and August 2021.

In response, the Landlord's Agent stated that the tenancy agreement addendum contains a liquidated damages clause whereby if the Tenant were to break the fixed term lease, they would be required to pay \$2,800.00 for the cost of re-renting the rental unit. The Landlord provided an invoice for re-renting the rental unit in the amount of \$1,680.00. The Landlord's Agent stated that the Tenant had agreed to pay the

liquidated damages to be released from the tenancy early. The Landlord's Agent stated that he listed the rental unit for a higher amount to match the market rate. The Landlord's Agent stated that he found a new Tenant to occupy the rental unit as of August 15, 2021.

The Landlord's Agent stated that the Tenant is required to pay for the full month of July 2021. The Landlord's Agent stated that the Tenant was not charged rent for August 2021, rather, was charged the liquidated damages and also the loss of rent for half of August 2021. Lastly, the Landlord's Agent stated that the Tenant was charged utilities for July and August 2021 however, this was meant to be adjusted at the end of the tenancy according to the actual amount of utilities used by the Tenant throughout the year. The Landlord's Agent stated that the Tenant still owes an amount for utilities. The Landlord provided a detailed account of utility amounts paid by the Tenant, however, did not include a copy of the utility bills in support.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy

agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, A tenant may 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.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

I find that the Tenant has provided insufficient evidence to demonstrate that they were entitled to end the fixed term tenancy early. I accept that the tenancy agreement contains a liquidated damages clause which outlines that the Tenant is responsible for pay costs incurred by the Landlord should the Tenant break the fixed term tenancy.

According to the Residential Policy Guideline #4; 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.

I find that the Tenant would have been required to pay the full month of rent for July 2021 to the Landlord as the rent was payable on the first day of each month and must be paid in full for that month. I accept that the Landlord did not find a new occupant to re-rent the rental unit starting mid July 2021. As such, I dismiss the Tenant's claim for compensation for half of July 2021 rent.

I find that the Landlord has suffered a loss of re-renting the rental unit in the amount of \$1,680.00 which was demonstrated that the invoice to the Landlord. As such, I find that they were permitted to retain this amount from the Tenant's August 2021 payment of \$2,850.00. I find that the Landlord, by listing the rental unit for \$3,500.00 in June and later reducing the amount of \$3,200.00, did not mitigate their loss. Listing the rental unit for \$650.00 more than what the Tenant was paying does not demonstrate mitigation. As such, I find that the Landlord is not entitled to the remaining balance paid to the Landlord. I find that the Tenant is entitled to compensation in the amount of (\$2,850.00 - \$1,680.00 = **\$1,170.00**).

The Tenant has also applied for the return of the utilities paid to the Landlord in the amount of \$375.00. In this case, I find that the Landlord has provided insufficient evidence to support that they are entitled to retain this amount towards utilities. I find that the Landlord provided a detailed account of payments made by the Tenant to the Landlord, however, the Landlord has not provided the actual cost of utilities compared to what the Tenant has paid. As such, I find that the Tenant is entitled to reimbursement for the utilities paid while they did not occupy the rental unit in the amount of **\$375.00**.

Having been partially successful, I find that the Tenant is entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to Section 67 of the Act, I find that the Tenant is entitled to a monetary order in the amount of \$1,645.00.

Conclusion

The Tenant has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of \$1,645.00. The order should be served to the Landlord as soon as possible and 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: December 19, 2022

Residential Tenancy Branch