



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURION PROPERTY ASSOCIATES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Compensation in the amount of \$5,198.00 for reneging on the tenancy agreement [the 'Compensation Claim'].
2. Reimbursement for the \$100.00 filing fee for their application.

The tenants also applied for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Payment to the tenants of double their \$1,237.61 deposit [the 'Deposit'], for a total of \$3,712.83.
2. Reimbursement for the \$100.00 filing fee for their application.

The corporate landlords appeared at the hearing on 6 July 2023 by way of an agent and along with an advocate. The tenants also appeared.

Issues to be Decided

Are the tenants bound by a liquidated-damages clause [the 'Clause'] in their agreement with the landlords?

If they are, then does that Clause set an upper limit on the Compensation Claim?

Did the landlords comply with the *Residential Tenancy Act* [the 'Act'] when they refused to return the Deposit to the tenants?

Should either party reimburse the other for the cost of filing their application?

Background and Evidence

The rent for this unit was \$2,499.00, and the tenants paid two deposits, each in the amount of \$1,249.50. One was a security deposit, and the other was a pet-damage deposit. The tenants agreed in writing to rent the unit for a fixed term [the 'Agreement'], ending 30 June.

Part of the Agreement included the Clause, which reads as follows:

If the Tenant breaches a material term of this Agreement that causes the Property Manager to end the tenancy by vacating or the Tenant gives notice before the end of the fixed term and does vacate before the end of any fixed term, the Tenant will pay the Property Manager the sum of \$2,499.00 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 Property Manager from claiming future rental revenue losses that will remain unliquidated.

I reviewed a copy of this Agreement, and noted sets of initials written beside the Clause.

The landlords told me the following about this clause:

1. it was included in another tenancy agreement that the tenants had signed before;
2. the landlords made sure to direct the attention of the tenants to this clause; and
3. the \$2,499.00 covers the cost of advertising the unit, and other costs in trying to find new tenants, and to otherwise compensate the landlords.

I asked the tenants why they agreed to the Clause when making their Agreement, and they told me that they needed a place to live.

Despite the agreed-upon term of the tenancy, the tenants told the landlords on 27 February that they would leave the unit early, and then moved out on 31 March.

After the tenants left, the landlords were unable to find new occupants for about a week and a half (until 11 April). This same day the landlords filed their application for dispute resolution.

The new occupants moved in on 1 May, and so, the unit remained vacant for April.

In order to attract new occupants, the landlords told me that they lowered the rent for this unit by \$100.00.

Analysis

I have considered all the statements made by the parties and the documents to which they referred me during this hearing. And I have considered all the arguments made by the parties.

Are the tenants bound by the Clause in their agreement with the landlords?

I accept that the tenants knew of this Clause when they made their Agreement to rent this unit:

1. the landlords told me that they drew their attention to it;
2. that the tenants had seen such a clause in a previous agreement that they had had with the landlords; and
3. the tenants initialled the Clause to indicate that they had reviewed it.

Though the tenants told me that they agreed to this Clause because they needed a place to live, they did not go so far as to argue that they were under any duress or coercion in agreeing to the Clause.

Accordingly, I see no reason why the tenants are not bound to the Clause to which they agreed.

Does that Clause set an upper limit on the Compensation Claim?

The amount of damages agreed to in the Clause is the equivalent of one month's rent. The landlords tell me that this amount is to compensate them for their costs in finding a new tenant for the unit, and otherwise just general compensation. In addition to this

amount, the landlords want more: they also want the tenants to pay rent for the month of April, when the unit was empty; and for two months worth of the \$100.00 rent reduction the landlords decided to make in order to entice new tenants.

But consider RESIDENTIAL TENANCY POLICY GUIDELINE 4: 'Liquidated Damages' [the 'Guideline']:

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 am satisfied that this Clause is an agreement in advance on the damages payable in the event of a breach of this Agreement. The addition afterward of, 'Payment of such liquidated damages does not preclude the Property Manager from claiming future rental revenue losses that will remain unliquidated.' does not change this. Perhaps if the unit had remained vacant for six months after the tenants moved out the landlords might have a more compelling argument for more money. But they thankfully secured new tenants 11 days after the old tenants moved out.

I do not accept that the damages under this Clause compensate the landlords for the cost of finding new tenants and so, on top of that, the old tenants should be further liable for the month of April. The utility of a liquidated-damages clause is that the parties agree in advance what a fair amount of compensation will be if the agreement is broken, and so avoid later bickering about what a fair amount is. To suggest that the amount agreed upon in this Clause does not, in fact, compensate the landlords for an early end to the tenancy is to veer off into classifying this Clause as an unenforceable penalty.

Just as the tenants are bound by this Clause, so too are the landlords: they agreed (indeed, they drafted) this Clause and, in doing so, calculated an amount that they determined was fair compensation. I see no reason to go beyond that.

To refer again to the Guideline, 'If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.' I have not determined that this Clause amounts to a penalty clause, but I do find that one month's rent is a fair upper-limit on the amount that the landlords can claim in the circumstances of this dispute.

And so I grant the landlords' application, but not in the amount they seek: I order that the tenants pay \$2,499.00 to the landlords, as agreed on in the Clause.

Did the landlords comply with the Residential Tenancy Act when they refused to return the Deposit to the tenants?

Section 38 (1) of the Act determines that a landlord must, within 15 days of the end of a tenancy, either repay a deposit, or apply to keep it. In this case, the landlords applied to keep the Deposit 11 days after the tenancy ended. Therefore, they complied with the Act when they refused to return the Deposit.

I dismiss the tenants' application without leave to re-apply.

As for reimbursement of filing fees, each party will bear their own costs.

Conclusion

I order that the tenants pay to the landlords \$2,499.00. But I authorise the landlords to retain the Deposit of \$1,249.50 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act. This leaves a balance of \$1,249.50.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 4 August 2023

Residential Tenancy Branch