



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, cleaning expenses, liquidated damages, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord's agents said another agent of the Landlord served the Tenant on January 16, 2012 with the Application and Notice of Hearing (the "hearing package") by registered mail to a forwarding address provided by the Tenant. Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on August 1, 2011 and was to expire on January 31, 2012 however it ended on December 30, 2011 when the Tenant moved out. Rent was \$1,225.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$612.50 at the beginning of the tenancy.

The Landlord's agents said the Tenant gave written notice on November 30, 2011 that she was ending the tenancy on December 31, 2011. The Landlord's agents said another agent of the Landlord began advertising the rental unit for availability at the beginning of December 2011 in a local and provincial newspaper as well as in an online publication. The Landlord's agents said the rental unit was not re-rented until January 16, 2012. Consequently, the Landlord made a claim for a loss of rental income for ½ of January 2012.

The Landlord's agents also claimed that it was a term of the tenancy agreement that the Tenant would be responsible for paying liquidated damages of \$300.00 if she ended the fixed term tenancy early. The Landlord's agents further claimed that the Tenant signed another document whereby she agreed to reimburse the Landlord for a \$100.00 move in bonus if her tenancy lasted less than 12 months.

The Landlords agents said the Tenant vacated the rental unit on December 30, 2011 and dropped off her keys. The Landlord's agents said they contacted the Tenant to try to set up a move out inspection but she said she was not well enough to participate so they did it without her. The Landlord's agents said they sent the Tenant a document seeking her approval to make deductions from the security deposit. The Landlord's agents said the Tenant agreed to deductions for carpet cleaning, general cleaning, drape cleaning and window cleaning expenses but did not agree to an amount for January 2012 rent. Consequently, the Landlord's agents said they were advised by another agent of the Landlord not to sign the agreement.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the Tenant entered into a 6 month fixed term tenancy that was to expire on January 31, 2012 but that the Tenant ended the tenancy early on December 31, 2011. In the absence of any evidence from the Tenant regarding the reliability of the Landlord's documentary evidence (ie. invoices) in support of this part of its claim, I find that the Landlord took reasonable steps to re-rent the rental unit for January 1, 2012 but was unable to re-rent it until January 16, 2012. Consequently, I find that the Landlord is entitled to recover a loss of rental income in the amount of **\$592.74**.

The Landlord also sought to recover liquidated damages (or a lease break fee) of \$300.00 pursuant to a term in the parties' tenancy agreement which states,

"to terminate the lease prior to January 31, 2012, the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition, the tenant is required to \$300.00 as liquidated damages to cover administration costs – this is not a penalty."

Section 12 of the tenancy agreement does not address when a tenant of a fixed term tenancy must give notice to end the tenancy. RTB Policy Guideline # 4 (Liquidated

Damages) says a liquidated damages clause is valid *“if it is a genuine pre-estimate of the damages that the parties agree in advance will be payable in the event of a breach of the tenancy agreement.”* In the absence of any evidence from the Tenant, I find that the Landlord is entitled to recover **\$300.00** as liquidated damages pursuant to the term of the tenancy agreement to that effect.

The Parties also entered into an agreement at the beginning of the tenancy wherein the Tenant agreed to reimburse the Landlord for a \$100.00 move in bonus if the tenancy did not last at least 12 months. I find that the tenancy did not last 12 months and therefore I find that the Landlord is entitled to recover the **\$100.00** move in bonus from the Tenant.

Section 35 of the Act requires a Landlord and Tenant to complete a condition inspection report together at the end of the tenancy. The Landlord is only entitled to complete the condition inspection report without the tenant if the Landlord has first given the tenant two opportunities to participate in an inspection with the last opportunity having been given on a document called a Final Notice to Schedule a Condition Inspection. I find that on or about December 30, 2011, the Landlord's agents gave the Tenant one opportunity to participate in a move out inspection and did not give her a Final Notice to Schedule a Condition Inspection. Consequently, I find that the Landlord did not comply with s. 35 of the Act and for that reason I give no weight to the move out Condition Inspection Report.

The Landlord's agents said the Tenant agreed in writing to deductions from her security deposit for carpet cleaning, general cleaning, drape cleaning and window cleaning. The Landlord's agents provided a receipt in the amount of **\$72.80** for cleaning the carpets in the rental unit. In the absence of any evidence from the Tenant that the carpets did not require cleaning, I find that the Landlord is entitled to recover this amount. The Landlord provided a document called “Resident Manager's Payroll Advice” which lists amounts for “cleaning, curtains and windows” with work order numbers also listed. The Landlord's agents agreed during the hearing to provide the work orders following the hearing but instead re-submitted a copy of the same document. In the absence of the work orders for the cleaning, window cleaning and drape cleaning, I find that there is insufficient evidence to support these claims and they are dismissed without leave to reapply.

The Landlord's agents argued that the Tenant agreed in writing to deductions from her security deposit for cleaning, window cleaning and drape cleaning. However, the Landlord admitted that no one signed that document on behalf of the Landlord because they did not accept the Tenant's offer to pay only those expenses and not rent for January, 2012. Consequently, I find that the document relied on by the Landlord is not an agreement but rather an offer by the Tenant which was not accepted by the Landlord.

I find that the Landlord is entitled pursuant to s. 72(1) of the Act to recover from the Tenant the **\$50.00** filing fee it paid for this proceeding. Consequently, I find that the Landlord is entitled to a monetary award of \$1,115.54. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit of \$612.50 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$503.04.

Conclusion

A Monetary Order in the amount of **\$503.04** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 *Residential Tenancy Act*.

Dated: March 20, 2012.

Residential Tenancy Branch