



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE WOLSTENCROFT REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MNSD, FF

Landlord: MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution.

The *style of cause* has been amended to reflect solely the name of the corporate landlord – removing the name of the landlord's agent.

The tenant originally filed their application **January 04, 2016** pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application (\$50) - Section 72.

The landlord originally filed their application **January 21, 2016** for Orders as follows;

1. A monetary Order for loss – Section 67
2. A monetary Order for Unpaid rent – section 67
3. An Order to keep the security deposit – Section 38
4. An Order to recover the filing fee for this application (\$100) - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, present *relevant* evidence, and make *relevant* submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The parties each acknowledged receiving all the evidence of the other. The parties were apprised that despite their abundance of evidence only *relevant* evidence would be considered in the Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The tenancy of this matter ended when the tenant fully vacated the rental unit and possession reverted to the landlord.

The undisputed evidence in this matter is as follows. The subject tenancy began February 01, 2015 as a written fixed-term tenancy agreement with an effective end date of January 31, 2016. The hearing had benefit of the written Tenancy Agreement and respective addendum. At the outset of the tenancy the landlord collected a security deposit in the amount of \$575.00 which the landlord retains in trust. During the tenancy the payable rent was in the amount of \$1150.00 due in advance on the first day of each month. The parties agree there was a *move in* inspection conducted by the parties on January 23, 2015.

The tenant testified they moved their belongings (vacated) and ceased occupying the unit December 01, 2015. Having previously notified the landlord they were vacating December 31, 2015 they determined to pay the rent and retain possession for the entire month of December 2015, and returning the keys December 31, 2016. During this time the tenant attended to fully vacating the unit and cleaning it.

The parties agree there was a mutual *move out* condition inspection conducted on January 06, 2016 and recorded on a condition inspection report for the parties to consider and determine as to the administration of the security deposit. The same report also includes the tenant's written forwarding address, which the parties agree was provided to the landlord no earlier than the inspection date of January 06, 2016.

The parties agreed the tenancy effectively ended December 31, 2015. On January 02, 2016 the landlord found the rental unit unlocked, vacant and with the keys inside the unit.

Tenant's application

The parties agree that on January 06, 2016 the tenant did not agree to any deductions from the security deposit following the mutual condition inspection. The tenant seeks compensation pursuant to Section 38 of the Act for double the security deposit.

Landlord's application

The parties agree the landlord received an e-mail from the tenant on October 31, 2015 stating they had purchased a house and would, "be moving at the of December" and "the unit will be vacant staring Jan 01." – as stated. The tenant testified it was intended to state they would vacate December 31, 2015. The landlord testified they acted on the tenant's notice and began advertising the rental unit for January 01, 2016. The landlord testified they placed an advertisement on Craigslist. The hearing did not have benefit of supporting document evidence. They testified they did not employ other means in aid of renting the unit. During November 2015 the parties communicated in respect to showings in which the landlord informed the tenant that their co-operation was in their interest and reminding the tenant of their fixed term lease obligations. The parties agree the landlord conducted 1 showing of the unit inside the month of November 2015. The

landlord testified they did not conduct any showings of the unit inside the month of December 2015. The landlord claims they were successful in re-renting the unit for March 01, 2016.

The landlord seeks loss of revenue pursuant to a prematurely ended tenancy for the month of January 2016 in the amount of \$1150.00. The landlord further seeks *liquidated damages* of \$575.00 pursuant to the tenancy agreement. The landlord is also claiming an NSF fee of \$25.00 and a late payment of rent fee of \$25.00.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

Section 38(1) of the Act provides as follows :

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the tenancy ended December 31, 2015. I find the parties completed the move out condition inspection and the landlord received the forwarding address on January 06, 2016. I find the landlord made their original application on the 15th day after receiving the forwarding address. As a result the tenant is not entitled to the doubling provisions afforded by Section 38 of the Act and this portion of their application is **dismissed**.

Landlord's claim

I find that the tenant did not provide the landlord an effective notice to end the tenancy in accordance with **Section 45 or 52** of the Act when they e-mailed the landlord on October 31, 2015 notifying them of their plan to vacate.

I further find that a tenant who signs a fixed term tenancy agreement / contract is responsible for the rent to the end of the fixed term.

In addition, the landlord's claim for loss of revenue is subject to their statutory duty pursuant to Section 7(2) to do whatever is reasonable to minimize the loss. Under the *Act*, a party claiming a loss bears the burden of proof and must satisfy each component of the following test. **Section 7** of the *Act* states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In relevance to this matter, the test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. *Proof* that the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

In the absence of other evidence, than the landlord's testimony they conducted 1 showing of the unit in November 2015, I find that the landlord has not provided sufficient *proof* showing what reasonable steps were taken to *mitigate or minimize* the potential loss of revenue. As a result, **I dismiss** the landlord's claim for loss of revenue for January 2016. I find that the landlord's ancillary claims for an NSF fee and late payment of rent fee are collaterally also **dismissed**.

I find that a Tenancy Agreement is, effectively, a contract for a tenancy. I find the tenant signed the contractual Tenancy Agreement including confirming their consent to the landlord's clause of the pre-estimate of administrative costs for re-renting the unit in the event the tenant determined to end the tenancy earlier than the terms afforded by the fixed term contract. Residential Tenancy Policy Guidelines (RTPG) respecting *Liquidated Damages* state that in order for a landlord's claim of *Liquidated Damages* to be enforceable, their claim in the Tenancy Agreement must be a *genuine pre-estimate of loss at the time the contract is entered into*. If the amount for liquidated damages is deemed extravagant in comparison to the greatest loss that would be incurred by the landlord to re-rent the unit, the liquidated damages clause may be interpreted as a penalty or unconscionable, and therefore unenforceable in legal proceedings. However, if the *Liquidated Damage* clause is determined to be valid the tenant must then pay the stipulated amount in the Agreement / contract even where the eventual actual costs do not amount to the pre-estimate, or are non-existent.

The landlord claims that their *Liquidated Damages* charge is to compensate them for their administrative costs resulting from an early end to the tenancy in breach of the Tenancy Agreement. I accept the landlord's evidence in this regard, and as a result I find the contract's clause respecting *Liquidated Damages* clause is not extravagant, not a penalty, and therefore valid and enforceable. I find the tenant ended the Tenancy Agreement early and in doing so breached the provisions within the agreement, and Section 45 of the Act, triggering the landlord's entitlement to claim *Liquidated Damages*.

Therefore, I find that the landlord has established a monetary claim for the *Liquidated Damages* in the amount of \$575.00. I further find that the landlord is entitled to recover their filing fee of \$100.00, for a total entitlement of **\$675.00**.

The security deposit will be off-set from the award made herein. As a result, the tenant's application is rendered **dismissed** in its entirety.

Calculation for monetary order

Liquidated damages award	575.00
Landlord's filing fee	100.00
Minus security deposit held in trust	-575.00
Monetary Order for landlord	100.00

Conclusion

The tenant's application **is dismissed**. The landlord's application, in relevant part, is granted.

I Order that the landlord retain the security deposit of \$575.00 in partial satisfaction of their claim, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: July 27, 2016

Residential Tenancy Branch

