



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCL-S, MNSD, FFT, FFL

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 to recover the fee for filing an Application for Dispute Resolution.

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

The Agent for the Landlord stated that on March 14, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch were sent to each Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited two Canada Post tracking numbers that corroborates this statement.

In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenants did not appear at the hearing. As the Tenants were properly served with notice of these proceedings, the hearing the Landlord's evidence, it was accepted as evidence for these proceedings.

Preliminary Matter

The Tenants did not attend the hearing in support of their Application for Dispute Resolution. I confirmed that the correct call-in numbers and participant codes had been provided in the Notices of Hearing.

I find that the Tenants failed to diligently pursue the application and I therefore dismiss the Tenants' Application for Dispute Resolution, without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to compensation for liquidated damages and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the parties entered into a fixed term tenancy agreement, the fixed term of which began on April 16, 2017 and ended on April 30, 2018;
- the Tenants agreed to pay monthly rent of \$3,000.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,500.00, which the Landlord still retains;
- the Tenant paid a pet damage deposit of \$1,500.00, which the Landlord has returned;
- on January 12, 2018 the Tenants provided notice of their intent to vacate the rental unit on March 01, 2018; and
- the Tenants vacated the rental unit on February 25, 2018.

The Landlord is seeking compensation for liquidated damages. In the Application for Dispute Resolution the Landlord claimed \$1,575.00 in compensation. At the hearing the Landlord reduced the amount of that claim to \$1,500.00.

The Landlord submitted a copy of the tenancy agreement. There is a term in this tenancy agreement which stipulates, in part, that if the tenant ends the fixed term tenancy before the end of the original term the sum of half a month's rent plus GST will be paid to the Landlord as Liquidated Damages and not as a penalty. The term specifies that the payment is to cover the administrative costs of re-renting the rental unit. The Agent for the Landlord stated that this fee is to compensate the Landlord for administrative costs of re-renting the rental unit.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a fixed term tenancy with the Landlord, the fixed term of which began on April 16, 2017 and ended on April 30, 2018.

On the basis of the undisputed evidence I find that the Tenants agreed to pay monthly rent of \$3,000.00 by the first day of each month.

On the basis of the undisputed evidence I find that the Tenants I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenants, which requires the Tenants to pay one half of a month's rent (\$1,500.00) 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 \$1,500.00 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 the basis of the undisputed evidence I find that Tenants ended this tenancy prior to the end of the fixed term of the tenancy. I therefore find that the Landlord is entitled to collect liquidated damages of \$1,500.00.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,600.00, which includes \$1,500.00 for liquidated damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*,

I authorize the Landlord to retain the Tenant's security deposit of \$1,500.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$100.00. 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: September 27, 2018

Residential Tenancy Branch