



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westsea Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, for money owed or compensation for damage or loss, and to recover the RTB filing fee, and an order that the landlord may retain the security deposit.

Both the tenant and representatives of the landlord participated in the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The parties agree the tenancy started on August 1, 2013 and was a fixed term tenancy agreement until January 31, 2014. The tenant was obligated to pay \$675.00 in rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$337.50. The tenant paid an additional \$30.00 each month for parking, and this is set out in the written tenancy agreement.

The parties completed a move-in Condition Inspection Report on July 25, 2013 and a copy of the report was put into evidence.

The tenant gave evidence that she left written notice for the landlord under the office door on December 13, 2013, that she would end her tenancy on December 31, 2013. Her evidence is that she moved out a day or so later.

The tenant provided a copy of her written notice, which reads in part:

I am writing this notice to inform you I will be terminating my residency as of Dec. 31 2013 at 1713 – 1147 Quadra Victoria BC. ... I will be able to complete a walk through of the apt in the evening after 430 pm and will be in touch to arrange a

date and time. With respect to the return of my damage it can be sent to [friend's name] at [friend's mailing address].

The landlord gave evidence that the landlord received the tenant's written notice on December 16, 2013, which was a Monday and the next day the office was staffed. The landlord's evidence is that the building continually advertises for new tenants, however they did not attempt to re-rent the rental unit for January 1, 2014. The representative of the landlord who gave evidence on this point said they "couldn't" re-rent the rental unit until January 31, 2014. My understanding is that he meant the landlord could not re-rent the rental unit until January 31, 2014 because of the existence of the fixed term tenancy agreement.

The tenancy agreement contains a liquidated damages clause which reads as follows:

5. LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$337.50 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The landlord seeks a monetary order as follows:

January 2014 rent and parking	\$ 705.00
Liquidated damages (per tenancy agreement)	337.50
Cleaning fee (8 hours at \$15.00 per hour)	120.00
Laundry card not returned	10.00
RTB filing fee	50.00
Canada Post charges for registered mail re RTB hearing	19.92
Total claim	\$ 1,242.42

The landlord gave evidence that, after shortly receiving the tenant's notice, they posted a notice to enter the rental unit on the tenant's door. The landlord entered the rental unit on December 19 or 20, 2013 and observed that the tenant had moved out.

The tenant disputes that a notice to enter the rental unit was posted on the door. She gave evidence that a friend checked her mail every two days until the end of December 2013 and her friend would have told her if there was a notice on the door.

The landlord said the tenant did not contact the landlord to arrange a move-out inspection. Asked whether the landlord had the tenant's phone number, the landlord said he did not believe so.

The landlord gave evidence that his wife conducted a move-out inspection without the tenant's participation, after the tenant moved out. The move-out Condition Inspection Report provided in evidence is dated January 2, 2014 and contains the landlord's signature but not the tenant's signature. The landlord's evidence is that the floors, bathroom, sinks, and toilet needed cleaning, the walls needed wiping, and the kitchen cupboards needed to be wiped out.

The landlord also gave evidence that the tenant did not return the laundry card that was issued to her for use in the building laundry room. The tenancy agreement does not appear to include any provision regarding the laundry card.

The tenant gave evidence that she and her friend cleaned the rental unit before she moved out. She said the rental unit is about 350 square feet and therefore did not take long to clean. She described the walls as cement which is coated with some material that gives them texture, and for that reason she could not clean them. The tenant's evidence is that the rental unit was "spotless" when she finished cleaning.

The tenant gave evidence that she and her friend cleaned the refrigerator, stove, and cupboards. She states there is no carpet. She states she mopped the floors and balcony floor. She states she cleaned the bathroom sink, toilet, and tub, and wiped down the bathroom shelving. She states that she and her boyfriend smoke, however they only smoked on the balcony and not inside the rental unit.

The tenant admits she left behind a table and chair that the landlord would have had to dispose of. She agrees that it would be appropriate for the landlord to charge her for one hour's work for the removal of the table and chair.

The tenant agrees she kept the laundry card, but says she did so because she still had \$22.00 credit on the card and did not know how to get her money back.

Analysis

I accept the landlord's evidence that he received the tenant's notice on December 16, 2013. I also accept the landlord's evidence that he entered the rental unit on December 19 or 20, 2013.

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. In this case, the liquidated damages clause specifies the amount of \$337.50 which is the equivalent of one half month's rent. I find the amount specified and agreed to by the parties is a reasonable pre-estimate of the landlord's costs and therefore the term is enforceable and the landlord is entitled to the sum of \$337.50.

The landlord is not entitled to an order for January 2014 rent or parking. The landlord was aware that the tenant had ended her tenancy on December 31, 2013, both because the landlord received the tenant's notice on December 16, 2013 and because the landlord entered the rental unit on December 19 or 20, 2013 and observed that the tenant had moved out. The liquidated damages clause is the landlord's remedy for the tenant having ended her tenancy prior to the end of the fixed term tenancy agreement. The landlord is not entitled to an order for January rent or parking in addition to liquidated damages.

At issue is whether the landlord is entitled to compensation of \$120.00 for eight hours of cleaning the rental unit at \$15.00 per hour. Pursuant to Section 35(2) of the Act, it is the landlord's responsibility to offer the tenant two opportunities for a move-out inspection. This might have been difficult for the landlord, since the tenant apparently moved out on December 14 or 15, 2013, and this was before the landlord received the tenant's written notice under the office door. However, I find that the landlord did not attempt to contact the tenant to arrange a move-out inspection, for example by posting a notice on the tenant's door or by writing to the address provided by the tenant. For that reason, the tenant's right to the return of her security deposit is not extinguished by Section 36 of the Act.

The landlord and tenant provided conflicting evidence regarding the cleanliness of the rental unit when the tenant moved out. The burden of proof is on the landlord to show entitlement to compensation. Since the landlord did not provide photographic or other evidence that the suite required eight hours of cleaning, the landlord has failed to prove entitlement to a cleaning fee. The tenant has agreed that it would be reasonable to

charge her \$15.00 for the removal of her table and chair from the rental unit. Accordingly, I grant the landlord a monetary order for \$15.00.

A landlord may charge a non-refundable fee for the cost of replacing keys or other access devices, pursuant to Section 7 of the Regulation. I find that the laundry card is not an access device within the meaning of that Section, since it is not used to access any area of the building. I understand that the laundry card is used to operate the washing machines and dryers as an alternative to using coins. Also, the landlord did not provide any evidence to indicate that the landlord suffered any loss as a result of the tenant's failure to return the laundry card. Further, the tenancy agreement does not provide for any fee when a tenant fails to return a laundry card. For those reasons, I dismiss the landlord's claim for \$10.00 as compensation for the tenant's failure to return the laundry card.

The landlord has had mixed success in its application. Accordingly, it is entitled to one-half the RTB filing fee and registered mail charges. This amounts to \$25.00 and 9.96 respectively for a total of \$34.96.

The landlord is entitled to \$337.50 (liquidated damages), \$15.00 (cleaning fee), and \$34.96 (RTB expenses) for a total of \$387.46. I order that the landlord retain the security deposit of \$337.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$49.96. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Summary of landlord's monetary award:

	Claim	Award
January 2014 rent and parking	\$ 705.00	\$ 0.00
Liquidated damages (per tenancy agreement)	337.50	337.50
Cleaning fee (8 hours at \$15.00 per hour)	120.00	15.00
Laundry card not returned	10.00	0.00
RTB filing fee	50.00	25.00
Canada Post charges for registered mail re RTB hearing	19.92	9.96
Total claim	\$ 1,242.42	\$ 387.46
less Security Deposit		(337.50)
Monetary Order		\$ 49.96

Conclusion

I grant the landlord a monetary order of \$49.96. The landlord is also entitled to retain the security deposit of \$337.50.

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: February 25, 2014

Residential Tenancy Branch

