



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is readily apparent from the details of the dispute that the Landlord is also seeking compensation for lost revenue and liquidated damages, and those issues will be considered at these proceedings.

The Agent for the Landlord stated that on March 12, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the forwarding address provided by the Tenant at the end of the tenancy. The Agent for the Landlord cited a tracking number 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 Tenant did not appear at the hearing.

On March 21, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. **The Landlord** stated that these documents, with the exception of two letters, were served to the Tenant with the Application for Dispute Resolution. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act*. All documents served to the Tenant were accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent/lost revenue, liquidated damages, and compensation for damage to the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that indicates the parties entered into a fixed term tenancy that began on December 01, 2013, the fixed term of which ends on November 13, 2014. The tenancy agreement indicates that the Tenant was required to pay monthly rent of \$1,300.00 by the first day of each month and that the Tenant paid a security deposit of \$650.00.

The Agent for the Landlord stated that on March 03, 2014 the Tenant informed the Landlord that the Tenant was vacating the rental unit and that the Tenant vacated the rental unit on that date. The Agent for the Landlord stated that the rental unit was re-rented on March 11, 2014. She stated that the Tenant paid no rent for March and the Landlord is seeking compensation for lost revenue for the first 10 days of March, in the amount of \$440.00.

The Landlord is seeking compensation of \$350.00 in liquidated damages. There is a term in the tenancy agreement that requires the Tenant to pay this amount if the Tenant prematurely ends the fixed term tenancy agreement.

The Landlord is seeking compensation, in the amount of \$180.00, for cleaning the rental unit. The Agent for the Landlord stated that the rental unit needed cleaning at the end of the tenancy, as it was very dirty. The Agent for the Landlord stated that the Landlord paid \$180.00 to clean the unit but no receipts were submitted to corroborate that testimony.

The Landlord is seeking compensation, in the amount of \$500.00, for painting the rental unit. The Agent for the Landlord stated that liquid was spilled on the walls and the rental unit needed painting at the end of the tenancy. The Agent for the Landlord stated that the Landlord paid \$500.00 to paint the unit but no receipts were submitted to corroborate that testimony.

The Landlord is seeking compensation, in the amount of \$60.00, for the cost of replacing a laundry card that was not returned at the end of the tenancy. The Agent for the Landlord stated that the Landlord paid \$60.00 to replace the card but no receipts were submitted to corroborate that testimony.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,300.00 by the first day of each month and that this was fixed term tenancy that began on December 01, 2014, the fixed term of which was to end on November 13, 2014.

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

In these circumstances, I find that the Tenant must compensate the Landlord for loss of revenue that the Landlord experienced between March 01, 2014 and March 10, 2014, at a daily rate of \$41.94, which equates to \$410.94.

I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenants, which requires the Tenant to pay \$350.00 to the Landlord if the Tenant prematurely ends 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 \$350.00 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. On this basis, I find that the Landlord is entitled to collect liquidated damages of \$350.00.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In the absence of evidence to the contrary, I find that the Tenant breached section 37 of the *Act* when the Tenant did not clean the unit at the end of the tenancy, the Tenant did not repair the damaged walls, and the Tenant did not return a laundry card. In addition to establishing that a tenant reached the *Act*, a landlord must also accurately establish the cost of remedying the breach whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the rental unit, painting the rental unit, and replacing the laundry card. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's claim that it paid \$740.00 for remedying these breaches. I therefore award nominal damages of \$1.00 for these breaches, which is simply intended to acknowledge the breaches.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$811.94, which is comprised of \$410.94 for lost revenue, \$350.00 in liquidated damages, \$1.00 for nominal damages, and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of \$650.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$161.94. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 *Residential Tenancy Act*.

Dated: June 26, 2014

Residential Tenancy Branch

