



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:47 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she sent both tenants copies of the landlord's dispute resolution hearing package, including notice of this hearing, by Canada Post's ExpressPost service on January 23, 2015. She provided the Canada Post Tracking Numbers to confirm this mailing and that a signature was required upon delivery. She testified that the packages have not been returned to the landlord by Canada Post. She also testified that the landlord's written evidence package was also sent to the tenants by Canada Post's ExpressPost service on July 17, 2015. She also provided copies of the Canada Post Customer Receipts showing these mailings, again confirming that signatures were required for receipt of these packages. In accordance with sections 88, 89(1) and 90 of the *Act*, I am satisfied that the tenants were deemed served with the above documents five days after their mailing, on January 28, 2015, and July 22, 2015, respectively.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial

satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

On May 16, 2014, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy commencing on June 1, 2014. According to the terms of the Agreement entered into written evidence by the landlord, monthly rent was set at \$1,700.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$850.00 security deposit paid on June 1, 2014.

The landlord entered into written evidence a copy of the report of the June 1, 2014 joint move-in condition inspection, signed by both parties. The landlord also provided sworn testimony and written evidence in the form of a January 15, 2015 report of the landlord's inspection of the rental unit when this tenancy ended. The landlord entered written evidence supported by undisputed sworn testimony that the tenants failed to attend two scheduled move-out condition inspections.

The landlord provided copies of the tenants' November 25, 2014 written notice to end their tenancy by December 31, 2014, well in advance of the scheduled May 31, 2015 end to their fixed term tenancy. On January 5, 2015, and after the tenants failed to vacate the rental unit by December 31, 2014, the tenants sent the landlord a second notice of their intention to vacate the premises by January 15, 2015 by email. The landlord testified that the tenants vacated the rental unit on January 14, 2015, although they did not return their keys until January 17, 2015.

The landlord's original application for a monetary award of \$2,245.75 included the following items:

Item	Amount
Unpaid January 2015 Rent	\$1,700.00
Carpet Cleaning	183.75
Drapes & Blind Cleaning	45.00
Cleaning & Materials	162.00
Disposal of Abandoned Possessions	105.00
Moving Furniture to Garage	35.00
Replacement of 3 Keys	15.00
Total of Above Items	\$2,245.75

At the hearing, the landlord amended the requested monetary award as the landlord was able to re-rent the premises to other tenants as of January 15, 2015. She reduced the amount of the requested monetary award for unpaid rent owing from January 2015 to cover the pro-rated period from January 1-14, 2015. This resulted in a reduction in the landlord's requested monetary award for unpaid rent for that month from \$1,700.00 to \$ 767.74 ($14/31 \times \$1,700.00 = \767.74). This reduced the landlord's overall request for a monetary award from \$2,245.75 to \$1,313.49 plus the recovery of the landlord's \$50.00 filing fee for this application.

In support of the landlord's application, the landlord provided copies of a series of receipts for each of the claimed items, as well as photographs of the condition of the rental unit at the end of this tenancy. The landlord also asked for consideration of the condition inspection reports, noting that the tenants failed to attend the scheduled joint move-out condition inspections.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Based on the undisputed sworn testimony and written evidence of the landlord, I find that the tenants remained in the rental unit for the period from January 1-14, 2015, without paying any rent for that month. Pursuant to section 7(2) of the *Act*, I find that the landlord took adequate measures to attempt to mitigate losses arising out of the tenants' premature ending of this tenancy by locating other tenants willing to rent the premises as of January 15, 2015.

Given that there is undisputed evidence that the tenants ended their fixed term tenancy early and remained in the rental unit without paying rent for the first fourteen days of January 2015, I find that the landlord is entitled to a monetary award of \$767.74, the revised amount of the landlord's claim for unpaid rent owing from January 2015.

After reviewing all of the landlord's written and photographic evidence and considering the landlord's undisputed sworn testimony, I find that the landlord has established entitlement to a monetary award for damage arising out of this tenancy. The landlord's receipts and condition inspection reports support this claim for damage. I also find that the tenants have not met their responsibility established by paragraph 37(2)(a) of the *Act* "to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." I allow all of the landlord's damage claim but for the application to recover \$15.00 for the replacement of keys at the end of this tenancy. Section 25 of the *Act* establishes that the landlord is responsible for the costs associated with rekeying the premises before a new tenancy commences. In this case, the landlord confirmed that the landlord was able to access the rental unit with spare keys, so the cost of rekeying falls to the landlord.

I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord's application to recover the filing fee.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, damage arising out of this tenancy and the filing fee for this application, and to retain the tenants' security deposit:

Item	Amount
Unpaid Rent Owing from January 1-14, 2015	\$767.74
Carpet Cleaning	183.75
Drapes & Blind Cleaning	45.00
Cleaning & Materials	162.00
Disposal of Abandoned Possessions	105.00
Moving Furniture to Garage	35.00
Less Security Deposit	-850.00
Filing Fee	50.00
Total Monetary Order	\$498.49

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 06, 2015

Residential Tenancy Branch

