



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on November 13, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this tenancy started on February 10, 2015 for a fixed term which was due to end on January 31, 2016 but ended on October 31, 2015. Rent for this unit was \$975.00 per month due on the 1st of each month. The tenant paid a security deposit of \$487.50 on September 02, 2014.

The landlord testified that at the start of the tenancy the landlord did not complete a move in condition inspection report with the tenant and at the end of the tenancy the landlord had to clean the unit. The landlord is not requesting the cleaning costs from the tenant.

The landlord testified that the tenant gave late notice to end the tenancy on October 08, 2015. The notice was effective on October 31, 2015; however, the tenant was required to vacate by 1.00 p.m. and did not finish up until around midnight. The landlord had re-rented the unit for November 01, 2015 to a new tenant but they were not able to move in until November 02, 2015. The landlord seeks to recover liquidated damages of \$100.00 because the tenant ended the tenancy before the end of the fixed term. The landlord agreed that the tenancy agreement does not provide for a \$100.00 liquidated damage fee.

In addition to this the landlord testified that the tenant did not remove his truck from the units parking until around November 15, 2015. This meant the new tenant had to park on the road. The landlord did not want to have to get the tenant's truck towed but as parking is included in the rent the landlord seeks to recover \$30.00 for parking. The landlord agreed that they did not reimburse the new tenant \$30.00.

The landlord testified that they have returned \$307.50 of the tenant's security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. The landlord provided a copy of the tenancy agreement as documentary evidence. This tenancy agreement has a clause for liquidated damages; however, the landlord did not include a genuine pre-estimate for liquidated damages on the tenancy agreement.

I refer the parties to the Residential Tenancy Policy Guidelines #4. This guideline deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages. 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.

I have reviewed the tenancy agreement and find the landlord has not included an amount under this section which the tenant agreed to pay liquidated damages in the event the tenant ended the tenancy before the end of the fixed term. Consequently, as the tenant was not given the opportunity to agree to an amount of \$100.00 being charged as liquidated damages I must dismiss this section of the landlord's claim to recover \$100.00 for liquidated damages.

With regard to the landlord's claim to recover \$30.00 for parking; the landlord agreed that they have not suffered a loss of \$30.00 as the incoming tenant was not reimbursed parking costs because they had to park on the road. As the landlord has not suffered a loss then I must dismiss this section of the landlord's claim.

As I have dismissed the landlord's application then I Order the landlord to return the balance of the security deposit of \$180.00 to the tenant. The tenant will receive a Monetary Order for this amount pursuant to s. 67 and s. 38(6)(b) of the *Act*.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$180.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: April 01, 2016

Residential Tenancy Branch