



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes

For the tenant – MNSD

For the landlord – MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover double the security deposit. The landlord applied 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.

The hearing went ahead as scheduled and an agent for the landlord dialed into the conference call on behalf of the landlord. The phone line remained open for the duration of the hearing until 1.50 p.m.; however, the tenant did not dial into the call during this time. Based on the above I find that the tenant has failed to present the merits of his application and the tenant's application is dismissed without leave to reapply.

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 June 23, 2016. 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 appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Has the tenant extinguished his right to recover the security deposit and if so is the landlord entitled to keep it?

Background and Evidence

The landlord's agent (the landlord) testified that this tenancy started on October 01, 2015 for a fixed term tenancy that was not due to end until September 30, 2016. Rent for this unit was \$945.00 per month due on the first of each month. The tenant paid a security deposit of \$472.50 at the start of the tenancy. The tenant gave notice to end the tenancy on October 28, 2015 and this was effective for November 30, 2015 although the tenant actually vacated on November 25, 2015.

The landlord testified that there is a term in the tenancy agreement which states that if the tenant ends the tenancy early, a fee will be charged of \$472.50 for liquidated damages and not as a penalty. As the tenant ended his tenancy within two months the landlord seeks to recover liquidated damages to re-rent the unit of \$472.50. The landlord has provided a copy of the tenancy agreement in documentary evidence.

The landlord testified that the tenant was given two opportunities to attend a move out inspection of the unit. The tenant agreed to attend on November 27, 2015 but failed to appear. The move out inspection was conducted in the tenant's absence and it was found that the unit had not been cleaned and was left in a dirty condition. The landlord seeks to recover the cost to clean the unit of \$160.00 plus \$32.00 for cleaning supplies. The landlord has provided the move out report summary and photographic evinced showing the unclean conditions in the unit. The landlord seeks to recover these amounts from the tenant.

The landlord testified that the tenant has not provided a forwarding address in writing; however, did provide an address on his application for dispute resolution.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords undisputed evidence before me.

With regard to the landlord's claim for liquidated damages; in order for a liquidated damages clause to be upheld, two conditions must be met. First, the amount of the damages identified must roughly approximate the damages likely to fall upon the party seeking the benefit of the term. Second, the damages must be sufficiently uncertain at the time the contract is made that such a clause will likely save both parties the future difficulty of estimating damages.

I find the amount estimated at the start of the tenancy is a fair estimate for any costs to re-rent the unit. Furthermore, the tenant signed the tenancy agreement and therefore agreed that this fee would be applied if the tenant ended the tenancy before the end of the fixed term. As such I will allow the landlord's claim for liquidated damages to an amount of **\$472.50**.

With regard to the landlord's claim for cleaning the unit and supplies.; I refer the parties to s. 32(2) of the Act which states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I am satisfied from the evidence before me that the tenant did not leave the rental unit reasonably clean at the end of the tenancy and therefore I find the landlord is entitled to recover any costs incurred to clean the unit in preparation for new tenants. The landlord is therefore entitled to recover **\$160.00** for cleaning and **\$32.00** for cleaning supplies.

As the landlord's claim has merit I find the landlord is also entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the Act.

I refer the parties to s. 35 and 36 of the Act regarding the move out condition inspection which state:

35 *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

Consequently, I find from the undisputed testimony before me that the landlord did give the tenant two opportunities to attend the move out inspection and the tenant failed to attend and

has therefore extinguished his right to recover the security deposit. I Order the landlord to keep the security deposit pursuant to s. 38(4)(b) of the *Act*. The amount of \$472.50 has been offset against the landlord's monetary claim.

A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Liquidated damages	\$472.50
Cleaning	\$160.00
Cleaning supplies	\$32.00
Filing fee	\$100.00
Less security deposit	(-\$472.50)
Total amount due to the landlord	\$292.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$292.00**. The Order must be served on the respondent. Should the respondent 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.

The tenants application is dismissed without leave to reapply.

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: July 12, 2016

Residential Tenancy Branch