



Dispute Resolution Services

Page: 1

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;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both tenants attended the hearing. The landlord's agent attended the hearing. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants elected to call one witness.

No issues of service were raised the parties.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses 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, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 August 2015. The parties entered into a fixed term tenancy for an initial term of one year ending 31 July 2016. Monthly rent was \$1,150.00 and was due on the first. The landlord collected a security deposit in the amount of \$575.00 and a pet damage deposit in the amount of \$575.00 at the beginning of the tenancy. The tenants vacated the rental unit on 20 November 2015.

Clause 4 of the tenancy agreement provides, in part, as follows:

...if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option treat this Agreement at an end and in such even the sum of \$575.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty.

The agent testified that the tenants provided notice on 3 October 2015 to vacate the rental unit on 30 November 2015. The agent testified that a new tenancy did not begin until 1 January 2016.

The agent testified that the tenants had a pet. The agent testified that the carpet required cleaning at the end of the tenancy because of the pet. The agent testified that the oven was dirty and required one hour of cleaning.

The tenants testified that the condition inspection report at the beginning of the tenancy was not completed until the tenants had resided in the rental unit for half a month and after several rescheduled attempts. The tenant EH testified as to various deficiencies in the rental unit. The tenant EH testified that the tenants broke the lease because of the deficiencies.

The landlord provided a receipt from a third party contractor dated 30 November 2015 in the amount of \$48.00. The invoice sets out that it was for cleaning the oven.

The landlord provided a receipt from a third party contractor dated 19 December 2015 for carpet cleaning. The agent testified that the tenants' portion of this invoice is \$99.75 as the invoice included cleaning for multiple units.

On 9 December 2015, the landlord returned \$427.25 to the tenants.

The landlord claims for \$722.75:

Item	Amount
Liquidated Damages	\$575.00
Carpet Cleaning	99.75
Cleaning	48.00
Total Monetary Order Sought	\$722.75

Analysis

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 is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after a tenant breach. The cost of re-renting a rental unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why landlords enter into fixed-term tenancy agreements is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than they would have without the breach. This exposes the landlord to extra costs of rental. For that reason, I find there is a loss to the landlord associated with the breach. I accept the landlord's submission that this amount is a genuine pre-estimate of the loss.

The tenants submit that they were entitled to end the tenancy without penalty because of the landlord's failure to correct various deficiencies in the rental unit. Subsection 45(3) of the Act permits a tenant to end a tenancy early where the landlord has not rectified a breach of a material term. The tenants' remedy under the Act if the rental unit was in a condition that complied with the Act was to provide the landlord with notice pursuant to subsection 45(3) of the Act for breach of a material term and provide the landlord with a reasonable period to correct the breach. The tenants did not provide any such notice. Additional remedies were available to the tenants under section 67 of

the Act for a landlord's breach of the Act, regulations or tenancy agreement. The tenants were not entitled to the self-help remedy of unilaterally terminating the tenancy.

For these reasons, I find that the landlord is entitled to recover the liquidated damages amount from the tenants.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. ...

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

...

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the evidence before me, I find that the tenants left the rental unit in a condition that did not comply with subsection 37(2) of the Act. In particular, the tenants failed to clean the oven and carpets. As a result of this breach the landlord incurred the cost of cleaning the oven and the carpets. The landlord provided receipts from third

party contractors to substantiate the amount of its loss. I find that the landlord is entitled to recover these expenses.

The landlord applied to keep the tenants' security deposit and pet damage deposit. I allow the landlord to retain a portion of the deposits in satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application it is entitled to recover the filing fee paid from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$50.00 under the following terms:

Item	Amount
Liquidated Damages	\$575.00
Carpet Cleaning	99.75
Cleaning	48.00
Offset Pet Damage Deposit	-575.00
Offset Security Deposit Amount	-575.00
Returned Amount	427.25
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$50.00

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: July 25, 2016

Residential Tenancy Branch

