



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, MNDC, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application to claim a sum for liquidated damages and to retain the security deposit. The hearing was conducted by conference call. The landlord's representative and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to recover liquidated damages and retain the security deposit in satisfaction of the claim?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The rental unit is an apartment in Surrey. The tenancy began November 1, 2015 for a one year term ending October 31, 2016. Monthly rent in the amount of \$1,395.00 was payable on the first of each month. The tenants paid a security deposit of \$97.50 at the beginning of the tenancy.

The tenancy agreement contained a liquidated damage clause that if the tenants ended the tenancy before the end of the fixed term, the tenants would be obliged to pay the landlord the sum of \$697.50 as liquidated damages.

The landlord testified that the tenants gave written notice at the end of December, 2015 that they intended to move out on January 31, 2016.

The tenants took part in a move-out condition inspection on January 31, 2016. The landlord's representative presented the tenant with a security deposit refund form. On

the form the landlord claimed the liquidated damage charge of \$697.50 and requested the tenant to sign the form authorizing the landlord to retain the security deposit in satisfaction of the liquidated damage claim. The tenant refused to authorize the landlord to retain the deposit; instead she wrote on the form: "I disagree with not getting our damage deposit back". She also listed a number of complaints about the rental unit and ended with the statement that: "- We still want our damage deposit back as we caused no damage but rather had damage caused to us." The landlord was unable to re-rent the unit until March, 2016. The landlord filed its application to retain the deposit on February 12, 2016.

The tenant said at the hearing that she now understood the basis for a liquidated damage claim when the tenants ended the tenancy before the end of the fixed term, but she did not agree that the landlord should be able to recover the filing fee for its application because she has made no claim against the landlord and it was never explained to her that the landlord was not allowed to keep her security deposit without her written consent and without making an application to retain it.

Analysis

The tenants ended the fixed term tenancy agreement nine months before the end of the term. The tenant did not make any claim against the landlord or put the landlord on notice that they were claiming that the landlord had breached a material term of the tenancy agreement that constituted grounds for ending the tenancy. I find that the landlord is entitled to recover liquidated damages as provided by the agreement in the amount of \$697.50.

The tenants did not authorize the landlord to retain the security deposit in satisfaction of the claim; instead they specifically refused to consent to the retention of the deposit and demanded that it be returned to them. The *Residential Tenancy Act* provides that unless the landlord has the tenants' written consent to keep the security deposit, it must return the deposit or file an application for dispute resolution to claim the deposit within 15 days of the end of the tenancy. In these circumstances, the landlord had no alternative but to file an application if it claimed to be entitled to compensation in the amount of the deposit. I find that the landlord is entitled to recover the \$100.00 filing fee for this application, for a total award of \$797.50. I order that the landlord retain the security deposit in partial satisfaction of this award I grant the landlord an order under section 67 for the balance of \$100.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's application has been allowed and I have issued a monetary order in the amount of \$100.00.

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: September 29, 2016

Residential Tenancy Branch