



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, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord company was represented at the hearing by an agent who gave affirmed testimony. The tenant also attended the hearing and gave affirmed testimony. The parties were given the opportunity to question each other.

The tenant advised that no evidentiary material was provided to her by the landlord, however the landlord's agent testified that on November 16, 2016 the landlord served the tenant by registered mail with a hearing package that contained all evidentiary material that the landlord relies on, including a copy of the tenancy agreement, and has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the tenant. Given that the only evidentiary material relevant to this hearing is the tenancy agreement, and the tenant advised that she has a copy, that evidence is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 13, 2015 to expire on November 30, 2016 after which the tenancy would revert to a month-to-month tenancy. Rent in the amount of \$1,790.00 per month was payable on the 1st day of each month and there are no rental arrears. The tenant paid a pro-rated amount of rent for the first partial month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$895.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a new rental building.

The tenant gave written notice to vacate the rental unit effective November 1, 2016, which is contrary to the tenancy agreement. The tenancy agreement provides for liquidated damages in the amount of \$895.00 if the tenant ends the tenancy prior to November 30, 2016. The liquidated damages clause is a pre-determined estimate of the cost to re-rent and is not a penalty, but to prevent short-term rentals. It states: "4. Rental Period: The tenancy shall commence on the 13 day of November, 2015 and end on the 30 day of November, 2016 and if not renewed before the end of the original term by a new agreement, the tenancy shall continue as a month-to-month tenancy. However, 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 event the sum of \$895.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be In addition to any other right or remedies available to the Landlord."

The parties completed a move-out condition inspection report on October 31, 2016 at which time the landlord received the tenant's forwarding address in writing. There were no damages left by the tenant, and the rental unit was left clean. The rental unit has not yet been re-rented, and several units are currently vacant.

The landlord claims liquidated damages as against the tenant in the amount of \$895.00 as well as recovery of the \$100.00 filing fee, and an order permitting the landlord to keep the \$895.00 security deposit in partial satisfaction of the total claim.

The tenant testified that she had had a number of text conversations with another agent of the landlord prior to the beginning of the tenancy. At the beginning of November, 2015 the tenant met that agent and told the agent that the tenant had to find a job. At no point did the tenant agree to rent for more than 1 year, so the end date of the tenancy agreement ought to have read November 13, 2016.

In the summer of 2016 the tenant spoke with 2 other agents of the landlord who reviewed the tenancy agreement, and no one said anything about liquidated damages because they were also under the same assumption that it was a 1 year lease, not 1 year and 20 days.

The tenant gave written notice to vacate on September 27, 2016. On November 1, 2016 the keys were returned to the landlord's agents and the issue of liquidated damages and the security deposit surfaced. The agent of the landlord at that time was also very concerned and tried to contact the landlord office. November 1 to 13, 2016 is less than the security deposit, and the tenant agrees to pay the pro-rated amount. The tenant looked at the start date and agreed to a 1 year fixed term, so the end date on the tenancy agreement is incorrect. The agreement was signed late at night, and the tenant did not agree to rent for longer than 1 year.

Analysis

Firstly, the *Residential Tenancy Act* states that a tenant must give notice to vacate a rental unit the day before rent is payable under the tenancy agreement. In this case, rent was payable on the 1st day of each month, and the tenant gave notice to vacate on September 27, 2016 to end the tenancy on October 31, 2016.

I have also reviewed the tenancy agreement which does not mention a 1 year fixed term, but clearly states that the rental period is from November 13, 2015 to November 30, 2016. Therefore, I find that the tenant agreed to that period and a fixed term to the end of that period, as well as liquidated damages.

In the circumstances, I find that the landlord is entitled to claim the liquidated damages and is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$895.00 security deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: December 28, 2016

Residential Tenancy Branch