



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 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 tenant's 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 tenant pursuant to section 72.

The landlord's agents (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package via Canada Post XpressPost with a signature requirement on July 19, 2016. I accept the landlord's undisputed affirmed direct testimony that the tenant was served with the notice of hearing package as per sections 88 and 89 of the Act. No documentary evidence was submitted by the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed direct testimony that this tenancy began on July 1, 2016 on a fixed term tenancy ending on June 30, 2017 and then thereafter on a month-to-month basis. The monthly rent was \$1650.00 payable on the 1st day of each month and a security deposit of \$825.00 was paid on June 26, 2016 by the tenant. No condition inspection report for the move-in was made. The landlord stated that the tenant failed to move in and did not provide notice of such until July 2, 2016 by telephone.

The landlord seeks a monetary claim of \$2,475.00 which consists of:

Liquidation cost	\$825.00
July Rent	\$1,650.00

During the hearing the landlord amended the monetary claim stating that the unit was re-rented for July 15, 2016 and has suffered a loss of rental income of \$825.00 instead of \$1,650.00 for the entire month.

The landlord stated that there is a liquidated damages clause in which the tenant agreed to pay \$825.00 as liquidated damages if the term of the tenancy was not completed. The landlord stated that no costs were incurred in re-renting the unit.

Analysis

Residential Tenancy Branch Policy Guideline #4, Liquidated Damages states in part,

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...**

...A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

The landlord has stated that there have been no costs suffered as a result of the tenant breaching the fixed term tenancy by failing to move-in and begin the tenancy. The landlord was not able to provide any type of estimate of any actual losses incurred. As such, I find that this condition of the tenancy agreement to be a penalty and find it unconscionable and unenforceable. This portion of the landlord's claim is dismissed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to

the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As for the landlord's amended monetary claim of \$825.00 for the loss of ½ of July 2016 rent, I find has been established. The landlord provided undisputed affirmed evidence that a tenancy agreement was entered into by both parties to begin on July 1, 2016. The tenant failed to provide proper notice in writing, but did provide verbal notice to the landlord on July 2, 2016 that she would not be moving in to the rental unit.

Section 45 of the *Act* states how a tenancy ends and states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. In this case, it is clear based upon the undisputed affirmed evidence of the landlord that the tenant provided verbal notice on July 2, 2016 that she would not be moving in. The tenant has failed to provide 1 clear months' notice. As the landlord was able to mitigate any possible losses by re-renting the unit on July 15, 2016 the landlord has established a claim for compensation for ½ of the July 2016 rent of \$825.00.

The landlord having been only partially successful is entitled to recovery of \$50.00 which is ½ of the filing fee.

I authorize the landlord to retain the \$825.00 security deposit in partial satisfaction of the claim. No interest is payable during this period.

Conclusion

The landlord is granted a monetary order for \$50.00.

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: January 18, 2017

Residential Tenancy Branch