



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated August 9, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by K.P. and K.B., who provided affirmed testimony. The Tenants did not attend the hearing.

On behalf of the Landlord, K.P. and K.B. testified that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenants by registered mail on August 11, 2016. In support, the Landlord submitted copies of Canada Post registered mail receipts. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants are deemed to have received the Landlord's Application package on August 16, 2016.

The Landlord's agents were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
4. Is the Landlord entitled to an order permitting her to retain all or part of the security deposit?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. The agreement confirms a fixed-term tenancy for the period from June 1, 2016 to May 31, 2017. Rent in the amount of \$1,000.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$500.00 and a pet damage deposit of \$500.00, which the Landlord holds.

The Landlord testified the Tenants provided notice of their intention end the tenancy in July 2016. In an email dated July 11, 2016, submitted into evidence by the Landlord, the Tenants advised they were not comfortable remaining in the rental unit as their truck had been broken into. The Landlord confirmed the Tenants vacated the rental unit on or about July 31, 2016, in breach of the fixed-term tenancy agreement. A move-out condition inspection report, signed by the parties, was completed on August 2, 2016.

According to the Landlord's agents, the Tenants did not pay rent for the month of August 2016. They further confirmed that despite efforts, the Landlord was not able to re-rent the property until September 1, 2016. In support, the Landlord provided screen prints showing the property was listed for rent in several internet sites, effective August 1, 2016. The Landlord claimed \$1,000.00 for lost rent for the month of August 2016.

In addition, the Landlord claimed to be entitled to liquidated damages of \$300.00. The addendum to the tenancy agreement between the parties, submitted by the Landlord, states:

If the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat his tenancy agreement as being at an end. In such event, the sum of \$300.00 shall be paid by the Tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said premises.

[Reproduced as written.]

The Landlord also claimed to be entitled to recover from the Tenants cleaning costs of \$92.00. An invoice, submitted with the Landlord's documentary evidence, confirms that four hours of primarily cleaning was required.

Finally, the Landlord applied to recover the \$100.00 filing fee paid to make the Application. However, the Landlord's agents advised that the parties agreed to share the cost of the filing fee. As a result, the Landlord is seeking only to recover \$50.00 from the Tenants, which I allow. The Landlord's agents also requested that I apply the security and pet damage deposits to any monetary order I grant.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord provided oral testimony and documentary evidence in support of the Landlord's claim for compensation. The Tenants did not attend the hearing although duly served with notice of the hearing.

The Landlord sought to recovery \$1,000.00 in lost rent for the month of August 2016. Residential Tenancy Branch Policy Guideline 30 confirms that a fixed-term tenancy exists when "the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date." Guideline 30 goes on to state: "neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties." I find the Landlord and Tenants were parties to a fixed-term tenancy for the period from June 1, 2016 to May 31, 2017, and that the Tenants breached the agreement by ending the tenancy on July 31, 2016. Having taken steps to re-rent the property as of August 1, 2016, I also find the Landlord took steps to mitigate potential losses. Accordingly, I find the Landlord is entitled to a monetary award of \$1,000.00 for lost rent for August 2016, which was caused by the Tenants' breach.

The Landlord claimed liquidated damages of \$300.00, pursuant to the tenancy agreement between the parties. Residential Tenancy Branch Policy Guideline 4 states the following about liquidated damages clauses:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in an 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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

...

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

[Reproduced as written.]

I find the liquidated damages clause found in the addendum to the tenancy agreement between the parties is not a penalty. The liquidated damages clause was agreed to in advance and is a reasonable amount when compared to monthly rent. Accordingly, I award the Landlord \$300.00 as recovery of liquidated damages.

The Landlord also applied to recovery \$92.00 in cleaning costs. Although the condition inspection report suggests the rental unit was left in good condition at the end of the tenancy, I find the amount claimed to be reasonable in the circumstances.

Having been successful, and pursuant to the testimony of the Landlord's agents, I also grant the Landlord a monetary award of \$50.00 in recovery of the filing fee. In addition, pursuant to section 72 of the *Act*, I allow the Landlord's request to apply the security and pet damage deposits to the monetary order.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$442.00, which has been calculated as follows:

Claim	Amount allowed
Lost rent (August 2016):	\$1,000.00
Liquidated damages:	\$300.00
Cleaning costs:	\$92.00
Filing fee:	\$50.00
LESS deposits:	(\$1,000.00)
TOTAL:	\$442.00

Conclusion

The Landlord is granted a monetary order in the amount of \$442.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 7, 2017

Residential Tenancy Branch