



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: MNDC, MNR, MND, MNSD, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 18, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this testimony. The Property Manager stated that the service address was provided by the Landlord as a forwarding address on January 02, 2017, via email. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On June 16, 2017 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on June 16, 2017. In the absence of evidence to the contrary I find that this evidence was served to the Tenant and it was accepted as evidence for these proceedings.

The Agent for the Landlord stated that he also submitted a copy of the tenancy agreement with the Tenant to the Residential Tenancy Branch on June 16, 2017, which he also served to the Tenant. He was advised that this agreement was not in my possession and he was given the opportunity to re-submit that document. The Property Manager stated that the tenancy agreement will be faxed to the Residential Tenancy Branch on July 04, 2017. The tenancy agreement was received on July 04, 2017 and was considered when rendering this decision.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for unpaid rent and liquidated damages?

Background and Evidence:

The Agent for the Landlord stated that:

- the Tenant signed a tenancy agreement for a tenancy that was to begin on January 01, 2017;
- the tenancy agreement was for a fixed term, the fixed term of which was to end on December 31, 2017;
- there is a clause in the tenancy agreement that stipulates the Tenant must pay \$725.00 if her terminates the tenancy before the end of the fixed term;
- the Tenant agreed to pay rent of \$1,450.00 by the first day of each month;
- the Tenant paid a security deposit of \$725.00;
- on January 02, 2017 the Tenant informed the Landlord that he would not be moving into the rental unit;
- no rent was paid for January of 2017; and
- the unit was not re-rented until February of 2017.

The Landlord is seeking to recover rent for January of 2017, in the amount of \$1,450.00, and liquidated damages of \$725.00.

Analysis:

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a tenancy agreement that was to begin on January 01, 2017, for which the Tenant agreed to pay monthly rent of \$1,450.00.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. As the Tenant entered into a tenancy agreement with the Landlord, I find that he was obligated to end this tenancy in compliance with section 45 of the *Act*.

As the Tenant did not provide the Landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due, I find that the Respondent was obligated to pay rent when it was due on January 01, 2017. On the basis of the undisputed evidence I find that rent has not been paid for January and I therefore find that the Tenant owes \$1,450.00 in rent for January of 2017.

On the basis of the undisputed evidence I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenant, which requires the Tenant to pay \$725.00 to the Landlord if he prematurely ends this fixed term tenancy. 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 of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$725.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances. On this basis, I find that the Landlord is entitled to collect liquidated damages of \$725.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion:

The Landlord has established a monetary claim, in the amount of \$2,275.00, which includes \$1,450.00 in rent, \$725.00 in liquidated damages, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$725.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,550.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 Section 9.1(1) of the *Act*.

Dated: July 11, 2017

Residential Tenancy Branch