



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

A hearing was convened on April 05, 2018 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, 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 September 15, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The Tenants acknowledged receiving these documents by registered mail. I therefore find that these documents have been served in accordance with section 89(1) of the *Residential Tenancy Act (Act)*.

On March 15, 2018 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on March 14, 2018. The male Tenant acknowledged receiving all of the Landlord's evidence, with the exception of an email dated September 01, 2017. All of the evidence the Tenants acknowledged receiving was accepted as evidence for these proceedings.

On March 13, 2018 the Tenants submitted evidence to the Residential Tenancy Branch, that was numbered 1-24. The male Tenant stated that this evidence was served to the Landlord, via regular mail, on March 17, 2018. The Agent for the Landlord stated that this evidence was not received.

The male Tenant requested an adjournment for the purposes of re-serving the Tenants' 24 pages of evidence. For reasons outlined in my interim decision of April 05, 2018, the hearing was adjourned.

The hearing was reconvened on June 27, 2018 and was concluded on that date.

At the reconvened hearing the male Tenant stated that the 24 pages of evidence the Tenant originally submitted to the Residential Tenancy Branch was re-served to the Landlord on April 10, 2018, via registered mail. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

At the reconvened hearing the Agent for the Landlord stated that the email dated September 01, 2017, which the Tenants did not acknowledge receiving in the evidence served by the Landlord, was re-served to the Tenants on April 18, 2018, via registered mail. The male Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On April 20, 2018 the Landlord submitted 21 pages of evidence to the Residential Tenancy Branch, some of which had been previously submitted. The Agent for the Landlord was advised that any evidence that had not been previously submitted to the Residential Tenancy Branch would not be accepted as evidence for these proceedings, as it was submitted after the hearing commenced, which is not permitted by the Residential Tenancy Branch Rules of Procedure.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence accepted for these proceedings has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to liquidated damages, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on June 06, 2017;
- the rental unit was vacated on September 07, 2017;
- rent of \$1,500.00 and a parking fee of \$25.00 was due on the first day of each month;
- the Tenant paid a security deposit of \$750.00;
- a condition inspection report was completed at the beginning of the tenancy;
- the rental unit was jointly inspected at the end of the tenancy but the Tenant refused to sign the condition inspection report that was completed at the end of the tenancy; and
- the Landlord received a forwarding address for the Tenant, in writing, on September 01, 2017.

A copy of the written tenancy agreement was submitted in evidence, which was signed by the female Tenant and the Agent for the Landlord. This tenancy agreement indicates the tenancy is for a fixed term, the fixed term of which ends on December 31, 2017.

There is a clause in the tenancy agreement, which is initialed by the female Tenant, which reads, in part: "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 \$750.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty". The Landlord is seeking liquidated damages of \$750.00.

The Agent for the Landlord stated that the liquidated damages is for costs associated to locating a new tenant, such as showing the rental unit and finding a new tenant. She stated that the Tenant provided the Landlord with information regarding two potential tenants, neither of whom were accepted as tenants by the Landlord.

The male Tenant argued that the Landlord is not entitled to liquidated damages as the Landlord did not have to show the unit. He said the Tenants showed the unit to prospective tenants on behalf of the Landlord.

The Landlord and the Tenant agree that the Tenant asked for permission to sublet the rental unit, via email. The Agent for the Landlord stated that this request was denied because the Landlord does not permit sublets. The male Tenant stated that the Tenant the request for a sublet was denied and that the Tenant was not provided with a reason for the refusal.

A copy of an email was submitted in evidence, dated August 18, 2018. In this email the Tenant informs the Landlord the rental unit will be vacated on, or before, August 31, 2017. In this email the Tenant asks permission to sublet.

The Landlord is seeking compensation, in the amount of \$98.00, for cleaning the rental unit. The Agent for the Landlord stated that the kitchen appliances and all of the walls needed cleaning at the end of the tenancy. The Landlord submitted photographs, which the Agent for the Landlord stated were taken at the end of the tenancy. She stated that the photographs represent the type of cleaning that was required, but that not all areas in need of cleaning were photographed.

The male Tenant stated that the rental unit did not require cleaning at the end of the tenancy. The Tenant submitted photographs of the rental unit that the Tenant took at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$50.00, for cleaning the carpet outside the front door of the rental unit. The Agent for the Landlord stated that the Tenant frequently left a bag of garbage outside the door of the rental unit, which leaked and stained the carpet. She stated that she told the female Tenant that garbage should not be left outside of the rental unit. The Landlord submitted photographs of stains on the carpet.

The male Tenant stated that they did not leave garbage outside their front door and he does not know why the carpet is stained. He stated that this is a common area and anyone using the area could have stained the carpet. The female Tenant stated that the Agent for the Landlord did not tell her that garbage should not be left outside of the rental unit.

Analysis

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 female Tenant, which requires the Tenant to pay \$750.00 to the Landlord if the tenancy is ended by the Tenant prior to December 31, 2017. 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 \$7500.00 is a reasonable estimate given the potential expense of advertising a rental unit; the time a landlord would potentially 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. I therefore find that the Tenant is obligated to pay liquidated damages even if the Tenant showed the rental unit on behalf of the Landlord and the Landlord did not incur any of the costs of re-renting.

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 \$750.00.

I hereby authorize the Landlord to retain the Tenant's security deposit of \$750.00, pursuant to section 72(2) of the *Act*, in compensation for the liquidated damages that are due.

Section 34(1) of the *Act* stipulates that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit. Section 34(2) of the *Act* stipulates that if a fixed term tenancy agreement has 6 months or more remaining in the term, the landlord must not unreasonably withhold the consent required under subsection (1).

On the basis of the undisputed evidence I find that the Landlord breached section 34(2) of the *Act* when it denied the Tenant's request to sublet the rental unit. I find that the Landlord's decision to deny the request was based on company policy, rather than a reasonable consideration of the circumstances of the request.

In the event a tenant believes that a landlord is unreasonably withholding consent to assign or sublet a rental unit, the tenant has the right to seek authority to sublet from the Residential Tenancy Branch. The Tenant has not done so.

I find, however, that the Landlord's breach of section 34(1) of the *Act* does not negate the liquidation damages clause of the tenancy agreement. I therefore find that the Tenant cannot use the Landlord's failure to permit a sublet as a defense to the claim for liquidated damages.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. On the basis of all the photographs submitted in evidence I find that the rental unit was left in reasonably clean condition. Although some dirt can be seen on a wall and on the stovetop in the Landlord's photographs, I find that amount of dirt is minor and that it does not establish that the unit was not left in reasonably clean condition.

As the Landlord has failed to establish that the rental unit was not left in reasonably clean condition, I dismiss the Landlord's claim for cleaning the rental unit.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant stained the carpet in the hallway outside of the door of the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that the Tenant left garbage in that area or that refutes the Tenant's submission that garbage was not left in that area. In the absence of proof that garbage was left in that area by the Tenant, I find it is entirely possible that someone else stained the carpet in this common area.

As the Landlord has failed to establish that the Tenant stained the carpet in the common area, I dismiss the Landlord's claim for cleaning the carpet.

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 claim for liquidated damages, of \$750.00, and has been authorized to retain the security deposit in compensation for liquidated damages.

The Landlord has established a monetary claim of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution and I grant the Landlord a monetary Order for the \$100.00. 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: June 28, 2018

Residential Tenancy Branch