



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 FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing was scheduled to convene at 1:30 p.m. on September 20, 2018 by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; 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.

An agent for the landlord attended the hearing and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing (the Hearing Package) by Express Post on April 11, 2018 to the forwarding address provided by the tenant, and was permitted to provide proof of such service after the hearing had concluded. I have now received a Canada Post tracking document showing that the package was sent to the tenant by Express Post on April 11, 2018 and was received by the tenant on April 15, 2018, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*

Issue(s) to be Decided

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

- 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, and more specifically for late payment of rent fees and NSF fees?
- 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 May 1, 2017 and was to expire on April 30, 2018 but ultimately ended on March 22, 2018. Rent in the amount of \$2,000.00 per month was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant was served with a 10 Day Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided as evidence for this hearing. It is dated March 9, 2018 and contains an effective date of vacancy of March 22, 2018 for unpaid rent in the amount of \$2,050.00 that was due on March 1, 2018. That amount includes \$25.00 for a late fee and \$25.00 for an N.S.F. fee, but the landlord's agent does not know how much the landlord's financial institution has charged the landlord for the returned cheque. The tenancy agreement specifies \$25.00 for each late rent payment and \$25.00 for N.S.F. fees.

The landlord's head office calculated a pro-rated amount of rent for March, given that the tenant moved out in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the landlord claims the pro-rated amount of \$1,404.84. The rental unit was re-rented for April 15, 2018.

The landlord's agent also testified that a move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy, and a copy has been provided for this hearing, along with photographs that were taken during the move-out condition inspection on March 22, 2018. The tenant participated in both inspections.

The landlord has also provided a Monetary Order Worksheet setting out the following damage claims:

- \$150.00 for painting;

- \$52.50 for purchasing paint;
- \$240.00 for cleaning;
- \$48.00 for cleaning supplies;
- \$25.00 for replacing 5 light bulbs;
- \$50.00 for late fees and NSF fees;
- \$1,404.84 for pro-rated rent.

The landlord's agent also testified that although the tenancy agreement specifies liquidated damages, the landlord is not claiming it because the landlord was able to re-rent, however the tenant agreed in writing on the move-out condition inspection report that the landlord keep the security deposit for liquidated damages. The landlord's agent testified that the tenant did not agree to damages.

Receipts have also been provided as evidence for this hearing, and the landlord's agent testified that the rental units are always repainted before new tenants move in and believes this rental unit was last painted in April, 2017.

Analysis

Firstly, I accept the undisputed testimony of the landlord's agent that the pro-rated amount of rent is owed by the tenant to the landlord, and I find that the landlord has established the \$1,404.84 claim.

With respect to damages, I have reviewed the move-in and move-out condition inspection reports which show that the walls in the entrance and living room were poorly patched at the beginning of the tenancy and some stains existed on the walls or ceiling in the living room and master bedroom and third bedroom. I am not satisfied that the tenant is responsible for painting when painting was required at the beginning of the tenancy. I accept the landlord's claims for cleaning and cleaning supplies amounting to \$288.00, as well as \$25.00 for light bulbs.

I have also reviewed the tenancy agreement which specifies \$25.00 for each late rent payment and \$25.00 for each rent cheque returned for insufficient funds. The regulations to the *Residential Tenancy Act* state that a landlord may charge:

- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

In other words, the landlord may claim \$25.00 for late rent or an NSF cheque, and may charge what the landlord's financial institution charged the landlord. The landlord's agent does not know the amount charged by the landlord's financial institution, and I find that the landlord has established a claim of \$25.00 for late rent.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Having found that the landlord has established a claim of \$1,404.84 for pro-rated rent, \$288.00 for cleaning and cleaning supplies, \$25.00 for light bulbs, \$25.00 for late fees and recovery of the \$100.00 filing fee, I order the landlord to keep the \$1,000.00 security deposit and I grant a monetary order in favour of the landlord for the difference in the amount of \$842.84.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,000.00 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 \$842.84.

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: September 25, 2018

Residential Tenancy Branch