



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCL-S, FFL

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, to retain the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Agent for the Landlord stated that the Landlord has already applied the security deposit and pet damage deposit to unpaid rent, with the written permission of the Landlord. As the deposits have already been applied to unpaid rent, the Agent for the Landlord withdrew the application to retain those deposits.

The Agent for the Landlord stated that on January 16, 2019 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch were sent, via registered mail, to the forwarding address the Tenant verbally provided to the Landlord. 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.

As the aforementioned documents were served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for liquidated damages?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on September 01, 2018;
- the tenancy agreement was for a fixed term, the fixed term of which ended on August 31, 2019;
- rent of \$2,300.00 was due by the first day of each month;
- on December 22, 2018 the Tenant informed the Landlord that the rental unit had been vacated; and
- a neighbour told him the Tenant was observed moving out of the unit on December 20, 2018.

The Landlord is seeking liquidated damages of \$1,207.50 because the fixed term tenancy was ended prematurely. The Landlord submitted a copy of the tenancy agreement. Section 22 of the tenancy agreement reads:

If the tenant ends the fixed term tenancy before the end of the original term or if the tenant fails to give one full calendar months' notice on a month-to-month tenancy, the Landlord may, at the Landlord's option treat this Agreement as being at an end. In such event, the sum of half a month's rent plus GST will be paid by the Tenant to the Landlord or Landlords Agent as Liquidated Damages and not as a penalty to cover the administrative costs or re-renting the rental unit. The Landlord and Tenant acknowledge and agree that the payment of Liquidated Damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or equity, including, but not limited to damage of the rental unit or residential property and damages as a result of lost rental income due to the Tenant's breach of any term of this agreement.

The Landlord is seeking compensation, in the amount of \$552.00, for cleaning the rental unit. The Landlord submitted photographs, which the Agent for the Landlord stated were taken on December 22, 2018, which show the rental unit required cleaning. The Landlord submitted invoices to show that the Landlord incurred this expense.

The Landlord is seeking compensation, in the amount of \$200.00, for a missing cabinet. The Landlord stated that there was a cabinet in the garage at the start of the tenancy that was missing at the end of the tenancy. He stated that the cabinet was approximately 4 years old. He estimated the value at \$200.00, although he submitted

no evidence to corroborate that estimate.

Analysis

On the basis of the tenancy agreement submitted in evidence I find that there is a liquidated damages clause in the tenancy agreement that was signed by the Tenant, that requires the Tenant to pay \$1,150.00 + \$57.50 in GST to the Landlord if they prematurely end 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 \$1,207.50 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 \$1,207.50.

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.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$552.00.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not leave a cabinet in the unit that was provided at the start of the tenancy. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these

circumstances, I find that the Landlord failed to establish the true cost of replacing the missing cabinet. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that corroborates the Agent for the Landlord's estimate that it will cost \$200.00 to replace the cabinet. When receipts/estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts/estimate. As the cost of replacing the cabinet has not been established, I dismiss the claim for replacing the cabinet.

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 \$1,859.50, which includes \$1,207.50 in liquidated damages; \$552.00 for cleaning; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the \$1,859.50. 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: May 10, 2019

Residential Tenancy Branch