



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE WESTIN RESORT AND
SPA and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 8, 2019, and amended on or about May 14 and July 16, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for monetary loss or other money owed;
- an order permitting the Landlord to retain the security and pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by S.B., a witness. The Tenant was represented at the hearing by G.M., legal counsel, who was accompanied by B.M., an agent of the Landlord. The Landlord, S.B., and B.M. provided a solemn affirmation at the beginning of the hearing.

The Landlord testified that the Application package and amendment were served on the Tenant by registered mail. During the hearing, G.M. advised that the Tenant does not dispute service and receipt of the documents relied upon by the Landlord.

On behalf of the Tenant, G.M. advised that the documentary evidence relied upon by the Tenant was served on the Landlord via email on August 9, 2019. The Landlord acknowledged receipt on August 11, 2019.

Neither party raised any further issues with respect to service and receipt of the above documents. The parties were in attendance or were represented at the hearing and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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 and to which I was referred. 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 compensation for monetary loss or other money owed
2. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy arose from the Tenant's desire to house employees. A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on November 1, 2018. The parties agreed the tenancy ended on April 30, 2019. During the tenancy, rent in the amount of \$8,000.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$4,000.00, which the Landlord holds.

The Landlord's initial claim was made on May 8, 2019. At that time, the Landlord sought compensation in the amount of \$12,000.00 for damage to the rental unit. Shortly thereafter, on or about May 14, 2019, the Landlord increased the amount of her claim to \$18,485.18. On or about July 16, 2019, the Landlord again increased the amount of her claim to \$31,975.17.

During the hearing, G.M. referred to several hand-written notations made by the Landlord on a Condition Inspection Report, which were made during a move-out condition inspection that took place on April 30, 2019. She advised that the Landlord and the Tenant's agents discussed the value of the damage and cleaning required, and agreed to limit the Landlord's claim to a maximum of \$2,000.00. One notation on the form states: "Total damage as agreed by [G., B.M., S., Landlord] \$2,000 – maximum. Pending receipt of...photos."

In addition, the same Condition Inspection Report includes the Tenant's agreement, through B.M., that "\$2000 max" could be deducted from the security deposit held.

It also appears that the second page of a monetary order worksheet form, dated April 30, 2019, was used to summarize areas of concern. Items include cleaning of carpets, windows and duvet covers, repair of damage to a wooden door, and water stains. Below the list of items, the Landlord wrote: "See Inspection Form for final negotiation max \$2000.-"

G.M. submitted that these notations represented a settlement of the Landlord's damages claim and limited the Landlord's claim for damage to a maximum of \$2,000.00 by agreement during the move-out condition inspection.

In response, the Landlord acknowledged she did not do a thorough move-out condition inspection. On review of the evidence, it also appears the Landlord completed a move-in condition inspection but that a representative of the Tenant was not present. In any event, the Landlord testified that she wanted the Tenant's agents to return to complete the condition inspection but that they wished to complete it in one visit. In addition, the Landlord testified she felt pressured by B.M., and could not stop "shivering and shaking" during the move-out condition inspection.

At the end of the hearing, G.M. confirmed the Tenant's agreement the Landlord would be entitled to retain \$2,000.00 from the security deposit as agreed.

Analysis

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

In this case, after careful consideration, I find it is more likely than not that the Landlord and the Tenant agreed to limit the Landlord's claim for damage to \$2,000.00 during the move-out condition inspection on April 30, 2019. The written notations on the move-out condition inspection and monetary order worksheet forms support a "final" agreement with respect to damage that occurred to the rental unit during the tenancy. Further, with respect to the Landlord's request that the Tenant return to continue a move-out condition inspection, I find there is no obligation under the *Act* to do so. Finally, I also find there is insufficient evidence before me to conclude the Tenant's agents exerted any pressure on the Landlord to make the agreement. Indeed, the notations were in the Landlord's own handwriting.

I also find the "final negotiation" between the parties on April 30, 2019, was not an unreasonable settlement of the Landlord's claim which, at the time, did not exceed \$12,000.00.

Counsel for the Tenant agreed there was sufficient evidence to support the Landlord's loss up to \$2,000.00. However, the Landlord holds a security deposit in the amount of \$4,000.00. Policy Guideline #17 confirms that an arbitrator is to order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit, unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Therefore, pursuant to Policy Guideline #17, I find the Tenant is entitled to a monetary order in the amount of \$2,000.00.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

Pursuant to Policy Guideline #17, the Tenant is granted a monetary order in the amount of \$2,000.00. The 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: September 12, 2019

Residential Tenancy Branch