



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIQUE REAL ESTATE ACCOMMODATIONS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

AO appeared on behalf of the landlord as a representative and tenant AT appeared. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenant acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlord submitted a tenancy agreement which showed that the tenancy commenced on September 26, 2018 and had a termination date of September 30, 2018. The landlord testified that the termination date of September 30, 2018 was an error. The monthly rent was \$1,750.00 and the tenant paid a \$875.00 security deposit which the landlord still holds.

The tenancy agreement had the following provision regarding liquidated damages:

8. LIQUIDATED DAMAGES: If a tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of one-half month's rent as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The tenant testified that she ended the tenancy early because the building strata association was demanding that she removed her dog. The landlord testified that the tenant sent a move out notice email by on June 30 at 11:22 pm. The landlord responded with the following email on July 2, 2019 which stated, "Thank you for the email and the letter ending your tenancy. I have cc'd the rental department in this email who can get the paperwork ready for you..."

The tenant paid \$875.00 on July 1, 2019 for the July 2019 rent. The tenant moved out on July 12, 2019.

The parties completed a condition inspection report on July 12, 2019. The condition inspection report is very hard to read but I find that it states that the tenant agreed to "cleaning charges \$250 + tax (pre-authorize)" The tenant specifically wrote that she did not agree with any deduction from the security deposit for outstanding rent or liquidated damages.

The landlord testified that rental unit needed to be cleaned and they presented an invoice for \$262.50 from a cleaning company. The invoice was for \$200.00 for cleaning, \$50.00 window cleaning and \$12.50 for tax.

Analysis

Pursuant to the terms of the tenancy agreement, the fixed term length of the tenancy agreement expired on September 30, 2018. The tenancy then continued on a month-to-month basis. Pursuant to section 45 of the Act, the tenant was required to provide one month of notice to end the month-to-month tenancy agreement.

I find that the tenant delivered her notice to end the tenancy on June 30, 2019. I note that the tenant served the notice by email which is not a method of delivery not provided for under section 88 of the Act. However, the landlord acknowledged receipt of the notice on July 2, 2019 and the landlord did not object to method of delivery in the acknowledgment. For the foregoing reason, I find that the landlord was sufficiently served with the tenant's notice to end tenancy on June 30, 2019 pursuant to section 71(2)(c). Since the tenant's notice to end tenancy was served on June 30, 2019, the effective date of her notice to end tenancy was July 31, 2019.

Since the effective date of the notice to end tenancy was July 31, 2019, I find that the tenant has an obligation to pay rent for July 2019. Section 7(1) of the Act states, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." I find that the tenant has an obligation to pay rent in the amount of \$1,750.00 per month. I further find that the tenant has only paid \$875.00 for rent in July 2019. Accordingly, I find the landlord is entitled to a monetary award of \$875.00 for unpaid rent in July 2019.

I find that the landlord has not provided sufficient evidence to establish a claim for liquidated damages. The tenancy agreement states that liquidated damages are applicable if the tenant ends the tenancy agreement "before the end of any fixed term." However, in this tenancy the fixed term expired on September 30, 2018. Accordingly, I find that the tenant did not end the tenancy before the expiration of the fixed term and I dismiss the landlord's application for liquidated damages.

I find that the landlord has provided sufficient evidence to establish their claim for damages for cleaning costs. Section 37(2)(a) of the Act stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and

undamaged except for reasonable wear and tear. The Condition Inspection Report for move-out indicates that the parties agreed to cleaning costs of \$250.00 plus tax and the landlord presented a cleaning invoice for \$262.50. I find that the tenant has agreed in writing to the deduction of the cleaning costs. Accordingly, I find that the landlord is entitled to retain the \$262.50 in cleaning costs pursuant to section 38(4)(a).

I find that the landlord holds a security deposit in the amount of \$887.00 and I find that the landlord's damages may be deducted from security deposit pursuant to 72(2)(b) of the *Act*.

Since the landlord has been generally successful in this application, I grant the landlord reimbursement of the filing fee pursuant to section 72 of the *Act*.

After deducting the security deposit, I find that the landlord is entitled to monetary award of \$362.60, as calculated below.

<u>Item</u>	<u>Amount</u>
Unpaid rent for July 2019	\$875.00
Cleaning expenses	\$262.50
Less: security deposit	-\$875.00
Filing fee	\$100.00
Total	\$362.50

Conclusion

I grant the landlord a monetary order in the amount of **\$362.50**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to be 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 *Residential Tenancy Act*.

Dated: November 11, 2019

Residential Tenancy Branch