



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL-S, 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, for a monetary Order for damage to the rental unit; 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 December 12, 2019 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in September of 2019 were sent to the Tenant, via registered mail, at the forwarding address the Tenant provided on August 30, 2019. On the basis of the undisputed evidence, I find that these documents have been served to the Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*.

As the aforementioned documents have been served in accordance with section 89 of the *Act*, the evidence was accepted as evidence for these proceedings and the hearing proceeded in the absence of the Tenant.

The Agent for the Landlord affirmed that she would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

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

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on October 01, 2018;
- the tenancy was for a fixed term, the fixed term of which ended on September 30, 2019;
- the Tenant agreed to pay monthly rent of \$1,242.00;
- the Tenant paid a security deposit of \$621.00;
- the Tenant did not give written authority to retain any portion of the security deposit;
- on August 01, 2019 the Tenant verbally informed the Landlord of her intent to vacate the rental unit by August 30, 2019; and
- the Tenant vacated the rental unit on August 30, 2019.

The Landlord is seeking \$527.00 in liquidated damages.

The Landlord submitted a copy of the tenancy agreement, which is signed by both parties. Section 5 of the tenancy agreement reads:

If the 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 \$621 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 Landlord is seeking \$94.50 for cleaning the rental unit. The Agent for the Landlord outlined several areas in the unit that required cleaning after the rental unit was vacated. The Landlord submitted a receipt to show this expense was incurred.

Analysis

On the basis of the undisputed evidence, I find that this tenancy was for a fixed term, the fixed term of which ended on September 30, 2019; that the Tenant gave verbal notice of her intent to end the tenancy; and that the Tenant vacated the rental unit on August 30, 2019.

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 Tenant, which requires the Tenant to pay \$621.00 to the Landlord if she prematurely ends 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 \$621.00 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.

As the Tenant ended the fixed term tenancy prematurely, I find that the Landlord is entitled to collect liquidated damages. Although the tenancy agreement indicates the Tenant is obligated to pay \$621.00 in liquidated damages, the Landlord has only claimed liquidated damages of \$527.00. I therefore grant the Landlord the full amount of the claim for liquidated damages, in the amount of \$527.00.

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 \$94.50.

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 \$721.50, which includes \$527.00 for liquidated damages; \$94.50 for cleaning; and \$100.00 in

compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$621.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$100.50. 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: January 13, 2020

Residential Tenancy Branch