



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 10, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to retain the security and pet damage deposits held; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by C.C., an agent. The Tenant attended the hearing on her own behalf. C.C. and the Tenant provided affirmed testimony.

The Landlord testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. The Tenant acknowledged receipt. The Tenant testified the documentary evidence upon which she intended to rely was served on the Landlord by email. C.C. acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance 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 damage?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to retain the security and pet damage deposits held?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms that a fixed-term tenancy began on August 1, 2019 and was expected to continue to July 31, 2020. However, it was not disputed that the Tenant vacated the rental unit on March 31, 2020. During the tenancy, rent in the amount of \$1,000.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$500.00 which the Landlord holds.

The Application discloses a claim for \$1,088.50, which was particularized in the Application. However, during the hearing C.C. withdrew the Landlord's claim for \$100.00 for a move-in fee and \$31.50 for an NSF cheque and acknowledged they were paid by the Tenant. These aspects of the Landlord's claim have not been considered further.

First, the Landlord claims \$500.00 as liquidated damages for breach of the fixed-term tenancy agreement. C.C. testified the Tenant vacated the rental unit before the end of the fixed term on March 31, 2020, which was not disputed. The Landlord relied on paragraph 4 of the addendum to the tenancy agreement which states:

If the tenant request leaving before the end of the original terms...the Tenant shall pay \$ (amount equal to half month rent) not as a penalty, to cover the agent's rent-up fee of the said premises. The Landlord and the Tenant agree that the payment of the said liquidated damages shall not preclude the Landlord from exercising any further right of pursuing another remedy...due to the Tenant's breach...

[Reproduced as written.]

In reply, the Tenant submitted that the tenancy ended pursuant to a Mutual Agreement to End a Tenancy dated February 28, 2020 (the "Mutual Agreement"). The Tenant testified the document was signed and served on the Landlord and was therefore effective to end the fixed-term tenancy on March 31, 2020. In response, C.C. acknowledged receipt of the Mutual Agreement but testified that the Landlord did not agree to end the tenancy before the end of the fixed term and did not sign the document. A copy of the Mutual Agreement submitted into evidence was not signed by the Landlord. C.C. testified the Landlord was able to identify a new tenant quickly and did not suffer a loss of rent.

Second, the Landlord claims \$357.00 for an elevator repair as a result of damage caused when the Tenant moved into the rental unit. The Landlord relied on a signed Form K: Notice of Tenant's Responsibilities, dated July 4, 2019, a copy of which was submitted into evidence. It states: "*If a tenant or occupant of the strata lot...contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines*". C.C. also referred to a ledger which showed the charge but not the Tenant's payment. The Landlord expressed frustration because the Tenant occasionally paid the strata directly which caused accounting difficulties. C.C. confirmed during the hearing that he would be following up with the strata after the hearing in an effort to identify the alleged payment.

In reply, the Tenant testified that \$357.00 was paid to the strata and provided a receipt for the payment in support. Although not clearly legible, the receipt confirms the amount claimed was received by the strata for an elevator repair.

Finally, the Landlord claims \$100.00 in recovery of the filing fee and requests an order that the security deposit held be applied in satisfaction of the claim.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$500.00 for liquidated damages, Policy Guideline #4 confirms:

- *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 agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into;*
- *if the liquidated damages clause is held to constitute a penalty it will be unenforceable;*
- *a liquidated damages clause may be a penalty if the amount is extravagant in comparison to the greatest loss that could follow a breach, if a failure to pay money results in a greater amount to be paid, if a lump sum becomes due on the occurrence of several events;*
- *if a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent;*

- *generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.*

In this case, I find the Mutual agreement was not effective to end the fixed-term tenancy as alleged by the Tenant. As a result, I find the Tenant breached the tenancy agreement when she vacated the rental unit on March 31, 2020. Further, I find the liquidated damages clause is not a penalty. Rather, I find it was a genuine pre-estimate of the Landlord's loss for the Tenant's breach. Fortunately, as confirmed by C.C., the Landlord was able to identify a new tenant quickly and did not suffer a loss of rent. I also find the amount claimed – only half of a month's rent – is reasonable in the circumstances and is not oppressive. The Landlord is granted a monetary award for liquidated damages in the amount of \$500.00.

With respect to the Landlord's claim for \$357.00 for an elevator charge, I find there is insufficient evidence before me to grant the relief sought. I accept the Tenant's testimony, which was supported by a receipt confirming payment to the strata, that the elevator was repaired. In contrast, the testimony was uncertain to the point where he noted during the hearing that he would follow up with the strata following the hearing and reimburse any amount awarded to the Tenant. This aspect of the Landlord's claim is dismissed.

Having been partially successful, I find the Landlord is also entitled to recover the filing fee paid to make the Application. I also find the Landlord is entitled to apply the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$100.00, which has been calculated as follows:

Claim	Allowed
Liquidated damages:	\$500.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$500.00)
TOTAL:	\$100.00

Conclusion

The Landlord is granted a monetary order in the amount of \$100.00. 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: July 31, 2020

Residential Tenancy Branch