



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties appeared at the hearing. The landlord had an agent appear on their behalf. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

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

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The one-year fixed term tenancy was to begin on April 1, 2020 with a monthly rent of \$1800.00. The landlord testified that the tenant provided a security deposit of \$850.00 and pet deposit of \$850.00. The landlord still holds the \$1700.00 in deposits. The landlord testified that the tenant never moved into the unit because of COVID – 19 pandemic. The landlord testified that he and the tenant signed a Mutual End of a Tenancy on March 24, 2020 for the tenancy to end on April 30, 2020. The landlord testified that the tenant did not pay the rent for April.

The landlord testified that he attempted to rent the unit for May 1, 2020. The landlord testified that since there is a liquidated damages clause in the agreement, the tenant must pay a fee of \$850.00. The landlord is seeking the loss of rent for April, the liquidated damages fee and the recovery of the \$100.00 filing fee for a total award of \$2750.00.

The tenant gave the following testimony. The tenant testified that the landlord did not make an honest attempt to rent the unit for a date earlier than May 1, 2020. The tenant testified that she expected that the landlord would rent it very easily for April 1, 2020 or April 15, 2020. The tenant doesn't feel that the landlord is entitled to the liquidated damages claim as he didn't advertise aggressively and with flexible terms to facilitate a quick turnaround.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Unpaid Rent – \$1800.00

The parties entered into a Mutual Agreement to End a Tenancy on March 24, 2020 that the tenancy would end on April 30, 2020. Both parties signed the agreement. The tenant submits that the landlord did not make sufficient attempts to rent the unit for April 1, 2020 and therefore should not be entitled to this amount. The tenant's argument that the landlord could have rented the unit for a date before May 1, 2020 is illogical as they had an agreement in place and the tenant had legal right to the unit despite her not asking to ever take possession. Based on the above, the landlord is entitled to \$1800.00 for April 2020 rent.

Liquidated Damages - \$850.00

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. 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, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times. In this case, the landlord did not provide copies of any advertisements posted to re-rent the unit. The landlord also did not know how the above amount was a genuine pre-estimate of the loss.

As noted in the claim above, the parties entered into a Mutual Agreement to End a Tenancy. I find it equally illogical for the landlord to seek liquidated damages when in his own testimony he stated that he advised the tenant that if she signed the agreement, there would be no further costs incurred beyond the rent payable for April. I find that the landlord did not show how the \$850.00 claimed for liquidated damages in paragraph 4 of the tenancy agreement was a genuine pre-estimate of the loss as he did not provide sufficient evidence to show what steps were taken to reduce the loss or what the costs for \$850.00 were for. In addition, I find that he gave the tenant contradictory and confusing information about what the final costs could or would be if she did not move in. For the above reasons, I dismiss the landlord's claim of \$850.00 for liquidated damages without leave to reapply.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$1900.00. I order that the landlord retain the \$1700.00 in pet and security deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$200.00. This order may be filed in the 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 *Residential Tenancy Act*.

Dated: August 18, 2020

Residential Tenancy Branch