



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 MNRL-S, MNDCL, FFL

Introduction

On April 16, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for unpaid rent, and to recover the cost of the filing fee. On April 28, 2020, the Landlord submitted an amendment to the Application to add a request for a Monetary Order for damages; the matters were set for a participatory hearing via conference call.

The Landlord’s representative attended the conference call hearing; however, the Tenants did not attend at any time during the 24-minute hearing. The Landlord testified that they served the Tenants with the Notice of Dispute Resolution Proceeding by sending it via registered mail on April 20, 2020. The Landlord also testified that they served the Tenants with the amendment on June 17, 2020. Both of these packages were sent via registered mail and the Landlord provided the tracking numbers and stated that the Canada Post website indicated that the packages were both successfully delivered to the Tenants’ forwarding address. I find that the Tenants have been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord provided the following undisputed terms of the tenancy:

The one-year, fixed-term tenancy began on June 17, 2019 and continued until the Tenants terminated the tenancy early on April 20, 2020. The rent was \$1,500.00 and due on the first of each month. The Tenancy Agreement contained a clause (#4) that indicated the Tenants would be responsible for a \$750.00 liquidated damages fee if the tenancy was ended before the end of the one-year, fixed-term. The Landlord collected and still holds a security deposit in the amount of \$750.00.

The Landlord testified that the Tenants failed to pay their April 2020 rent and on April 15, 2020, they emailed the Landlord to advise that they were ending the tenancy on April 20, 2020.

The Landlord stated that the Tenants attended the rental unit for a move-out condition inspection and signed the report indicating that they acknowledged the damages; specifically, that there would be 2 hours of cleaning required.

The Landlord stated that they were able to find new tenants for the rental unit as of May 6, 2020.

The Landlord is claiming damages for the loss of April 2020 rent, in the amount of \$1,500.00, due to the Tenants breaching their fixed-term lease as stated in the Tenancy Agreement.

The Landlord stated that the Tenants broke their lease; therefore, is claiming \$750.00 in liquidated damages. The Landlord is also claiming for the two hours of cleaning that

was required at the end of the tenancy, in the amount of \$96.00. The Landlord acknowledged that they are still holding the Tenants' security deposit in the amount of \$750.00 and would like to apply the security deposit against the outstanding damages.

Summary of Landlord's claim:

Item	Amount
Unpaid April 2020 Rent	\$1,500.00
Liquidated Damages	750.00
2 hours of cleaning	96.00
Less Security Deposit	-750.00
Recovery of filing fee for this Application	100.00
Total Monetary Order	\$1,696.00

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

Based on the undisputed testimony and the submitted Tenancy Agreement, I find that the Tenants were obliged to pay rent in the amount of \$1,500.00 per month and failed to do so for April 2020.

Based on the evidence provided by the Landlord, I find that the Tenants terminated their one-year lease early, in contravention of the Tenancy Agreement.

As such, I find the Landlord has established a monetary loss in the amount of \$1,500.00; the rent for April 2020.

I accept the evidence from the Landlord that the Tenants signed the Tenancy Agreement and initialed the clause that indicated that the Tenants shall pay \$750.00 in liquidated damages in the event that they terminate the tenancy before the end of the original term. I considered the reasonableness of the clause and whether the clause is a penalty clause or liquidated damages clause by noting that the amount of liquidated damages was only half a months rent; that the Tenants provided very short notice when terminating their lease and that the Landlord was left a short amount of time to find new tenants. I find that the clause is reasonable, and I award the Landlord liquidated damages in the amount of \$750.00.

The Landlord provided copies of the move-out condition inspection report, photos of the rental unit where cleaning was required and an invoice for the cleaning. I find the Landlord has established a claim for damages to the rental unit in the amount of \$96.00.

The Landlord has established a monetary claim in the amount of \$2,346.00, which includes \$1,500.00 for unpaid rent, \$750.00 for liquidated damages, and \$96.00 for cleaning expenses.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit in the amount of \$750.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$1,696.00 in accordance with Section 67 of the Act.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$1,696.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 *Residential Tenancy Act*.

Dated: August 26, 2020

Residential Tenancy Branch