



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABC REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 23, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, and loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on September 25, 2020 as a teleconference hearing. Only the Landlord's Agent appeared at the appointed date and time of the hearing. No one appeared for the Tenant. The conference call line remained open and was monitored for 19 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent testified the Application and documentary evidence package was served to the Tenant by email on May 25, 2020. Based on the oral submissions of the Applicant, and in accordance with sections 71 of the *Act*, I find that the Tenant has been sufficiently served in accordance with the Act. The Tenant did not submit any documentary evidence in response to the Application.

The Landlord's Agent was 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, compensation, and loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on October 1, 2019 and was meant to be a fixed term tenancy up until September 30, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$2,200.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$2,200.00 which the Landlord continues to hold. The Landlord's Agent stated that the tenancy ended on January 31, 2020 and the Tenant's forwarding address was provided to the Landlord via email on May 11, 2020.

The Landlord is seeking monetary compensation in relation to some damage that was found in the rental unit at the end of the tenancy. The Landlord's Agent stated that the Tenant broke the flush button on the toilet in the rental unit. As such, the Landlord was required to replace the part at a cost of \$140.00. The Landlord's Agent stated that a plumber was hired to complete the repair at a cost of \$120.00. The Landlord provided an online quote for the replacement flush button as well a picture of the broken toilet in support.

The Landlord is seeking \$153.00 to replace a broken garbage can that was broken during the tenancy. The Landlord's Agent stated that the Landlord has not yet replaced the garbage can, however, the Landlord provided an online quote showing the cost of a similar garage can as well as a picture of the broken garbage can in support.

The Landlord is seeking \$20.00 to replace some broken door stops. The Landlord's Agent stated that the Landlord replaced four door stops which were \$5.00 each. The Landlord provided an online quote of the cost of the door stops.

Lastly, the Landlord is seeking \$2,200.00 in relation to the Tenant breaking the fixed term agreement early. The Landlord's Agent stated that there had been some concerns regarding the Tenant's tenancy and that the Tenant decided to vacate the rental unit on

January 31, 2020, prior to the end of the fixed term agreement. The Landlord's Agent stated that the Landlord was able to re-rent the rental unit on February 1, 2020. The Landlord's Agent stated that the tenancy agreement contains a condition which states;

"There will be a one month rent charge for administration, advertising and/or liquidated damage charges if the tenant terminates the lease agreement before the end of the lease with landlord approval."

The Landlord's Agent stated that the liquidated damages clause is meant to cover the costs of advertising to re-rent the rental unit as well as administrative fees. If successful, the Landlord is also seeking to recover the filing fee paid to make the Application.

No one appeared for the Tenant to dispute the Landlord's claims.

Analysis

Based on the uncontested 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.

The Landlord is claiming \$140.00 to replace the flush button on the toilet in the rental unit, as well as a further \$120.00 for the plumber to install the part. The Landlord is seeking \$153.00 to replace a broken garbage can that was broken during the tenancy. The Landlord is seeking \$20.00 to replace some broken door stops. The Landlord provided pictures of the broken items, as well as quotes in support of the cost associated with replacing the items.

In this case, I find that the Landlord has provided sufficient evidence to demonstrate an entitlement to a monetary award in the amount of \$433.00 in relation to the replacement or repair of the broken items identified by the Landlord at the end of the tenancy.

According to the Residential Policy Guideline #4; 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.

The Landlord is seeking \$2,200.00 for liquidated damages. The Landlord's Agent testified that the liquidated damages clause covers the administration fees, and for advertising the rental unit, during which they were able to secure a new occupant on February 1, 2020. While there may be some fees associated with re-renting the rental unit, the Landlord provided insufficient evidence to demonstrate what those costs are. The Landlord provided insufficient evidence to demonstrate that they have suffered a loss as a result of the Tenant ending the fixed term tenancy early.

As such, I find that the Landlord provided insufficient evidence to demonstrate that the liquidated damages clause in the tenancy agreement equivalent to one month of rent is genuine pre estimate of the loss at the time of the contract was entered into. Rather, I find that the clause constitutes a penalty, as it is extravagant in comparison to the greatest loss that could follow a breach; therefore, I render the clause unenforceable and dismiss the Landlord's claim for liquidated damages in the amount of \$2,200.00 without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate in the circumstances to

order that the Landlord retain \$533.00 from the \$2,200.00 security deposit held in satisfaction of the claim ($\$2,200.00 - \$533.00 = \$1,667.00$)

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,667.00, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$533.00 which has been deducted from the security deposit. The Tenant is granted a monetary order in the amount of \$1,667.00 which represents the remaining balance of the Tenant's security deposit. The order should be served to the Landlord as soon as possible and 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: September 25, 2020

Residential Tenancy Branch