



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 MNDL-S FFL

Introduction

The landlord has applied for compensation under section 67 of the *Residential Tenancy Act* (“Act”), including for recovery of the filing fee under section 72 of the Act.

The landlord’s agent and one of the tenants attended the hearing on January 4, 2021, which was held by teleconference.

No issues of service were raised by the parties.

Issues

1. Is the landlord entitled to compensation as claimed?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on February 18, 2020 and ended on August 13, 2020. Monthly rent was \$1,800.00 and the tenants paid a security deposit of \$900.00. A copy of the tenancy agreement was in evidence.

The tenants ended the fixed term tenancy, which was supposed to end on February 28, 2021, on August 31, 2020. While the tenants agreed with the landlord that they “notified” the landlord by leaving a voicemail on August 1, 2020, the first written “notice” that they

would be vacating the rental unit came on August 31, 2020 in the form of an email from the tenants to the landlords in which they confirmed that they were moving out. The tenant testified that he and his girlfriend (the co-tenant) believed that the notice they gave by telephone on August 1 was sufficient. The landlord seeks liquidated damages, as per the tenancy agreement, in the amount of \$900.00.

In addition, the landlord seeks unpaid rent for September 2020 and an NSF charge of \$50.00. Finally, the landlord seeks \$240.00 for the cost of cleaning the rental unit. An invoice for cleaning, photographs of the rental unit, and a completed Condition Inspection Report were submitted into evidence by the landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

The tenancy agreement clearly stated that if the tenants terminated the tenancy before the expiry of the term which ended February 28, 2021, that they would be required to pay liquidated damages in the amount of \$900.00. The tenants ended the tenancy in August 2020, before the term of the fixed term tenancy ended. Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for liquidated damages of \$900.00.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord's evidence (and an absence of any counter evidence from the tenants) shows that the tenants did not leave the rental unit reasonably clean. Thus, I find that taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for \$240.00.

Next, section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy. This section of the Act reads as follows:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

A tenant's notice to end a tenancy must comply with section 52 of the Act. One of the requirements under section 52 is that "a notice to end a tenancy must be in writing." In this case, the tenants (through simple lack of awareness, and not due to any negligence or intent) failed to provide proper notice. As such, when they sent their email on August 31, 2020, *that* was when proper notice was given. Section 45(2)(a), at a minimum, required the tenants to end the tenancy at least one month before. Thus, the tenancy ended on September 30, 2020, and they owe rent for that month.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent in the amount of \$1,800.00 plus the NSF charge of \$50.00.

As the landlord was successful in its application, I grant recovery of the \$100.00 application filing fee.

Pursuant to section 38(4)(b) of the Act I authorize and order that the landlord may retain the tenants' security deposit of \$900.00 in partial satisfaction of the above-noted awards, which total \$3,090.00.

A monetary order in the amount of \$2,190.00 is issued to the landlord.

Conclusion

The landlord's application is granted.

I order the landlord to retain the tenants' \$900.00 security deposit.

I grant the landlord a monetary order in the amount of \$2,190.00, which must be served on the tenants. If the tenants do not pay, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 4, 2021

Residential Tenancy Branch