



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials but that a second package of evidence was received outside of the timeline provided under Residential Rule of Procedure 3.14. Based on the testimonies of the parties I find that the tenant was sufficiently served with all the landlord's materials in accordance with section 71 of the Act. I find no prejudice to the tenant or breach of the principles of procedural fairness and natural justice through the inclusion of the landlord's materials.

There was an error in the respondent's name identified by the parties at the hearing. The corrected name is used in the style of cause for this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed-term tenancy began on July 1, 2020 and was scheduled to end June 30, 2021. Monthly rent was \$1,450.00 payable on the first of each month. A security deposit of \$725.00 was paid at the start of the tenancy and is still held by the landlord.

A copy of the tenancy agreement was submitted into evidence. The addendum to the tenancy agreement provides a liquidated damage clause which entitles the landlord to a monetary amount of \$725.00, as a pre-estimate of the cost of re-renting the rental suite, should the tenant end the fixed-term tenancy prior to its term.

The parties agree that the tenant ended the tenancy on August 31, 2020. The tenant provided a forwarding address in writing on that date.

The tenant testified that there were various reasons for ending the tenancy including their belief that the rental unit provided differed from that shown in advertisements, that various appliances were not functioning properly and that they felt the rental unit required additional cleaning at the start of the tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenants had provided a forwarding address on August 31, 2020 and the landlord filed their application for dispute resolution on September 14, 2020. As such, I find that the landlord was within the timeline allowed under the *Act* to file their application for authorization to retain the security deposit.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied that the tenancy agreement signed by the parties includes a liquidated damage clause allowing the landlord to recover the amount of \$725.00, if the tenant ends the fixed term tenancy earlier than the full term. I find that the amount of the damage, the circumstances in which the amount becomes payable and the landlord's explanation of how the amount was pre-estimated to be sufficient to establish that this is a true liquidated damage clause and not a penalty clause.

I find there to be insufficient evidence to show that the landlord failed to comply with a material term of the tenancy agreement allowing the tenant to end the fixed term tenancy on a date earlier than that specified under the tenancy agreement pursuant to section 45 of the *Act*. While I accept that the tenant made some complaints about the rental unit, I find insufficient evidence that these issues are founded on anything more than the subjective views of the tenant. I do not find sufficient evidence to support the various complaints raised by the tenant. Based on the totality of the evidence I do not find there is sufficient evidence that the landlord failed to comply with the tenancy agreement allowing the tenant to end the fixed term tenancy earlier than the date specified in the agreement.

Residential Tenancy Policy Guideline 4 provides that:

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.

Accordingly, I find it unnecessary to consider the actual costs incurred by the landlord due to the early end of the tenancy agreement. I find that the clause in the tenancy agreement signed by the parties to be a valid and enforceable liquidated damage clause. I accept the evidence of the parties that the tenant ended the tenancy before the full term and as a result are obligated to pay the amount of \$725.00, the equivalent of half a month's rent as liquidated damages.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100.00 and allow the landlord to retain the full security deposit of \$725.00 for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 4, 2021

Residential Tenancy Branch