



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

On November 13, 2020, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A.A. attended the hearing as an agent for the Landlord; however, neither Tenant attended at any point during the 51-minute teleconference. All parties in attendance provided a solemn affirmation.

She advised that each Tenant was served a Notice of Hearing and evidence package on November 21, 2020 by registered mail to the forwarding address the Tenants provided on the move-out inspection report (the registered mail tracking numbers are noted on the first page of this Decision). The tracking histories indicated that these packages went unclaimed. Based on this undisputed testimony, I am satisfied that the Tenants were sufficiently served the Landlord’s Notice of Hearing and evidence packages. Furthermore, as service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

A.A. advised that the tenancy started on December 10, 2019 as a fixed term tenancy ending on December 31, 2020. However, the tenancy ended when the Tenants gave up vacant possession of the rental unit on October 30, 2020. Rent was established at \$15,000.00 per month and was due on the first day of each month. A security deposit of \$7,500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that a move-in inspection report was conducted on December 5, 2019 and that a move-out inspection report was conducted on October 30, 2020. However, the Tenants refused to sign the move-out inspection report. A copy of these reports was submitted as documentary evidence. She stated that the Tenants provided their forwarding address by writing it on the move-out inspection report on October 30, 2020.

She submitted that the Landlord is seeking compensation in the amount of **\$30,000.00** because the Tenants signed a fixed term tenancy starting on December 10, 2019 that was to end on December 31, 2020. However, the Tenants gave written notice on September 17, 2020 to end the tenancy early, and they gave up vacant possession of the rental unit on October 30, 2020. She stated that the Tenants were on pre-authorized payments for rent and October 2020 rent was collected, but the Tenants recalled this amount through their bank at the end of October 2020. She submitted a copy of the Tenants' rent ledger to support this position.

She stated that the Landlord started advertising the rental unit on September 17, 2020, but due to the significant amount of rent, the Landlord was not able to secure a new tenant until December 15, 2020. As the maximum amount of compensation that can be sought through the Residential Tenancy Branch is \$35,000.00, the Landlord is not

seeking to claim for the half month of December 2020 rental loss that the Landlord suffered. The Landlord is only seeking compensation for October and November 2020 rental arrears.

In addition, she submitted that the Landlord is seeking compensation in the amount of **\$3,878.53** for the cost of liquidated damages because the Tenants ended the fixed term tenancy early. She referenced the tenancy agreement which indicated that the liquidated damages clause was noted and agreed upon as \$7,500.00; however, the Landlord only sought to recover the requested amount due to the limitation of being only able to claim \$35,000.00.

She stated that the Landlord advertised the rental unit on September 17, 2020 on three different websites, but the Landlord did not incur any costs to post these advertisements. She estimated that there were 15 showings of the rental unit, that each showing took approximately 45 minutes, and that an agent for the Landlord would have to drive 40 minutes each way for each viewing. She stated that there are many administrative tasks and costs associated with re-renting a property and these take a considerable amount of staff time. Moreover, as the Tenants did not leave the rental unit in a re-rentable state, additional time was required to coordinate repairs and cleaning. She submitted that the property management company charges the Landlord a flat rate of 5% of the gross monthly income, or \$9,000.00, to place a new tenant in this rental unit. She testified that the company's general practice is to note half a month's rent on all of their tenancy agreements as a figure for liquidated damages.

She advised that the Landlord is seeking compensation in the amount of **\$396.47** for the cost of replacing burnt out lightbulbs that the Tenants did not replace at the end of the tenancy. She stated that the rental unit had high ceilings and that while replacing these bulbs did not require specific expertise, it still took a considerable amount of time. She cited an invoice that was submitted as documentary evidence to support the Landlord's position on this claim. She explained that the cost of \$60.00 per hour to replace lightbulbs is an industry standard rate.

She submitted that the Landlord is seeking compensation in the amount of **\$485.00** for the cost of cleaning as the Tenants did not leave the rental unit in a re-rentable state. She referenced the deficiencies noted in the move-out inspection report and cited the pictures submitted as documentary evidence. She also referenced the invoice submitted, of two cleaners, to support this claim.

Finally, she advised that the Landlord is seeking compensation in the amount of **\$240.00** because the Tenants left excessive holes in the walls which required patching and re-painting. She referenced the deficiencies noted in the move-out inspection report and cited the pictures submitted as documentary evidence. She also referenced the invoice submitted to support this claim. While the total on this invoice was for \$1,140.00, she stated that it would be reasonable for the Landlord to claim for the amount of \$240.00 to cover the cost of patching and re-painting the damage that the Tenants were responsible for.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection report.

Section 21 of the *Regulations* outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute

Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenants' forwarding address on October 30, 2020. Furthermore, the Landlord made an Application, using this same address, to claim against the deposit on November 13, 2020. As the Landlord made this Application within 15 days of receiving the Tenants' forwarding address in writing, and as the Landlord did not extinguish the right to claim against the deposit, I am satisfied that the doubling provisions do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent of \$30,000.00 for October and November 2020, there is no dispute that the parties entered into a fixed term tenancy agreement from December 10, 2019 for a period of one year, ending on December 31, 2020. Yet, the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on October 30, 2020.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the undisputed evidence before me, I am satisfied that the Tenants gave written notice to end the tenancy effective for October 30, 2020. Given the amount of monthly rent for this unit, I find it reasonable to conclude that the demographic of prospective tenants that are able to afford this amount of rent is extremely limited. Thus,

I am satisfied that this factor alone substantially reduces the Landlord's likelihood of re-renting for November 1, 2020.

When reviewing the undisputed evidence, I am satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and re-rented the unit as quickly as possible. Therefore, I am satisfied that the Tenants are responsible for the November 2020 rental loss. In addition, as the Tenants recalled October 2020 rent which they were required to pay, I am satisfied that the Landlord should be compensated for this as well. Consequently, I grant the Landlord a Monetary Order in the amount of **\$30,000.00** to satisfy this claim.

Regarding the Landlord's claims for compensation in the amount \$3,878.53 for the costs associated with re-renting the unit after the Tenants broke the fixed term tenancy, I am satisfied that the Landlord included a charge for liquidated damages in the tenancy agreement that both parties agreed to. Policy Guideline # 4 states that 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" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

While A.A. outlined the Landlord's efforts to re-rent the unit, I find it important to note that this amount is meant to be calculated as a genuine pre-estimate of the Landlord's loss to do so. However, she stated that her company notes the amount of half a month's rent on every tenancy agreement as their liquidated damages charge. From this, I am satisfied that little thought was actually put into what would be considered a genuine pre-estimate of loss. It does not appear to me that this amount is a genuine pre-estimate of this loss, but rather simply an amount chosen as it happened to be conveniently equivalent to the amount of the security deposit. As such, I find that the amount of liquidated damages noted on the tenancy agreement constituted a penalty, and I dismiss this claim in its entirety.

With respect to the Landlord's claim for compensation in the amount of \$396.47 for the cost of replacing burnt out lightbulbs, I accept that the Tenants left lightbulbs that required replacing and that it took four hours to do so. However, I do not find that charging \$60.00 per hour for someone to replace lightbulbs to be a reasonable amount. This task did not require any specialized expertise and the Landlord could have hired a contractor to replace these bulbs at a reasonable cost. As such, I grant the Landlord a monetary award in the amount of **\$270.47** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$485.00 for the cost of cleaning the rental unit, I am satisfied from the undisputed evidence that the Tenants did not leave the unit in a re-rentable state. As such, I grant the Landlord a monetary award in the amount of **\$485.00** to rectify this matter.

Finally, with respect to the Landlord's claim for compensation in the amount of \$240.00 for patching and re-painting the walls, I am satisfied from the undisputed evidence that the Tenants left damage to the walls of the rental unit which required being repaired. As such, I grant the Landlord a monetary award in the amount of **\$240.00** for the cost to repair this damage.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

October and November 2020 rent	\$30,000.00
Lightbulb replacement	\$270.47
Cleaning	\$485.00
Wall repair	\$240.00
Filing fee	\$100.00
Security deposit	-\$7,500.00
TOTAL MONETARY AWARD	\$23,595.47

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$23,595.47** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: March 11, 2021

Residential Tenancy Branch