



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

MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on June 7, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing. However, the Tenants did not. The Landlord stated that he sent the Notice of Hearing, and evidence to each of the Tenant's at their respective forwarding addresses by registered mail on February 11, 2021 (tracking info provided). Pursuant to section 89 and 90 of the Act, I deem this package was served to the Tenant 5 days after it was mailed, February 16, 2021.

The Landlord was provided the 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. 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 compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

The tenancy agreement provided into evidence shows that monthly rent was \$2,200.00, and was due on the first of the month. The tenancy agreement started on December 1, 2020, and was for a fixed term until June 30, 2021. The Landlord stated that they hold a security deposit in the amount of \$1,100.00.

The Landlord is seeking \$1,100.00 in this application because the Tenants signed and agreed to the following term in the tenancy agreement:

RENTAL PERIOD. THE TENANCY SHALL COMMENCE

on the 01 day of December 2020 and
end on the 30 day of June 2021 and
if not renewed before the end of the original term by a new agreement, the tenancy shall continue as a month-to-month tenancy. However, if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement at an end and in such event the sum of \$ 1,100.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other right or remedies available to the Landlord.

The Landlord stated that the Tenants moved out at the end of January 2021, and they broke the lease. The Landlord is seeking to recover \$1,100.00 as a liquidated damages sum, pursuant to the above noted term in the tenancy agreement. The Landlord stated that this is to help pay for administrative costs associated with reposting, showing, and re-renting the unit, and to pay for this to be done by the property manager.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/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 everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking to recover \$1,100.00 as a liquidated damages sum, as per the tenancy agreement. I am satisfied this is a term and amount the Tenants agreed to pay. I also accept that it is a genuine pre-estimate of the Landlord's costs to re-rent, and that the amount is not a penalty.

I note that Residential Tenancy Policy Guideline 4 provides for liquidated damages. 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 fixed term by the Tenant. If a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum unless the sum is found to be a penalty.

In this case, I find the amount sought is reasonable, and it is an amount the Tenants agreed to pay the Landlord in the event they breached the fixed term agreement. I accept the fixed term was breached, without any legal basis to do so. As such, the Tenants are liable for this amount.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. I award \$100.00 for the cost of the filing fee. I authorize the Landlord to retain the security deposit (\$1,100.00), in full to cover the liquidated damages amount. Plus, the Landlord will be granted a monetary order for the remaining \$100.00 they are owed.

Conclusion

The Landlord is granted a monetary order in the amount of **\$100.00**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: June 07, 2021