



Dispute Resolution Services

Page: 1

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 **MNDL-S, MNDCL-S, MNRL-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;
- Authorization to retain the deposits for the tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants 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 agent OB (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

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

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.

This fixed-term tenancy began on August 15, 2020 and was scheduled to end on August 31, 2021. The monthly rent was \$1,550.00 payable on the first of each month. A security deposit of \$775.00 was collected at the start of the tenancy and is still held by the landlord. The landlord also collected a FOB deposit of \$25.00 which they still hold.

A copy of the signed tenancy agreement was submitted into evidence. The agreement provides that a late fee of \$25.00 will be charged for monthly rent payments not made by the due date. The agreement also includes a clause that if the tenant ends the tenancy prior to the full term, liquidated damages in the amount of \$775.00 will be payable.

The tenants gave written notice and ended the tenancy on February 28, 2021. The parties prepared a condition inspection report. The landlord submits that the rental unit required some cleaning and work to be done and listed the expected work and costs on the inspection report. The tenants did not agree to any deduction from their deposits.

The landlord submits that the cost of the work to the rental unit and replacement of fixtures and the FOB is \$181.00. The landlord further submits that the tenants incurred a late fee of \$25.00 and there is an arrear of that amount for this tenancy. The landlord also seeks liquidated damages in the amount of \$775.00.

The tenants gave lengthy testimony disputing the landlord's claim, stating that the landlord forged their signatures on the documents submitted, mentioning various grievances and complaints about the landlord.

Analysis

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.

In the present case as the parties disagree on the details of the tenancy and the landlord's claim, I must first make an assessment as to credibility. Taken in its entirety I find the tenants to not be credible as witnesses providing statements that are not supported in any documentary materials and have no air of reality to them. I find the submissions of the tenants to be more in the nature of contradiction and refutation rather than providing a cogent, believable version of events. I do not find the tenants' suggestion that any documents signed by them are actually forgeries to be believable or rational. Where the parties disagree I find the submissions of the landlord to be preferable.

I find that the tenancy agreement clearly provides that liquidated damages of \$775.00 apply when a tenant ends a fixed-term tenancy earlier than its full term. I accept the evidence of the parties that the tenant gave notice and ended the tenancy on February 28, 2021, earlier than the scheduled date of August 31, 2021. I find that the tenants had no basis for this early end under the Act and are therefore liable to pay the liquidated damages. I accept that these are true liquidated damages, a pre-calculation of the costs of an early end of the tenancy, and not a penalty. I therefore issue a monetary award in the landlord's favour in this amount.

I find that the tenancy agreement provides that late fees of \$25.00 applies to any payments made after the date rent is due. I am satisfied with the landlord's ledger showing the payments owing and received and accept that there is a \$25.00 arrear for this tenancy. Accordingly, I issue a monetary award in that mount in the landlord's favour.

I am satisfied with the evidence of the landlord including the condition inspection report, photographs of the suite and their testimony that some work was required at the end of the tenancy to restore the rental unit and that the tenants failed to return some items. I accept that the total cost of the work and replacement of items is \$181.00 and issue a monetary award accordingly.

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

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 and FOB 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 \$281.00 on the following terms:

Item	Amount
Rental Arrear	\$25.00
Cleaning and Replacement Costs	\$181.00
Liquidated Damages	\$775.00
Filing Fee	\$100.00
Less Security Deposit	-\$775.00
Less FOB Deposit	-\$25.00
TOTAL	\$281.00

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: August 5, 2021

Residential Tenancy Branch