



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, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damages for the Landlord of \$662.50; for a monetary order for damages of \$286.50; for a monetary order for unpaid rent of \$1,325.00, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, J.N. ("Agent"), appeared at the tele-conference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said she had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that she had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided their email address in the Application and they confirmed it in the hearing. The Tenant provided her email address in the hearing. The Parties confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on January 1, 2021 and was to run to December 31, 2021, with a monthly rent of \$1,325.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$662.50, and no pet damage deposit. The Agent said that the Landlord still holds the Tenant's whole security deposit pursuant to this Application.

The Tenant said that she vacated the rental unit on or about March 15, 2021, because of a personal matter, and that she texted that she was leaving and gave her forwarding address to the Landlord on March 5, 2021. The Agent said that they re-rented the rental unit on May 15, 2021.

The Parties agreed that they inspected the condition of the rental unit at the start of the tenancy, which condition was set out on a condition inspection report ("CIR"). The Tenant agreed that she took a picture of the CIR after the inspection was complete. The Landlord only submitted a copy of the CIR that the Agent filled out at the end of the tenancy after the Tenant had vacated the rental unit. The Tenant said she was not interested in participating in the move-out inspection.

#1 LIQUIDATED DAMAGES → \$662.50

Clause 4 of the Parties' tenancy agreement states:

...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 \$662.50 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 Tenant initialed a box beside this clause in the tenancy agreement.

In the hearing, the Agent said:

[The Tenant] signed the lease – it explains everything that once you sign, if you break lease, you lose the liquidation clause. She broke it and never gave notice, just texted that she's leaving. Afterwards, the phone number was not working.

A new tenant moved in on May 15. [The Tenant] moved out in March. It took time to know that she was out when the April rent didn't go through. She sent the key by registered mail to the head office.

I asked the Agent about their efforts to find a new tenant, and the Agent said:

It takes time to clean up. It was a mess; there was no cleaning, and furniture left behind. Maintenance work needed to be done. We advertised in the middle of April for May 1, but we got it for May 15.

The Tenant said she was leaving a relationship and that is why her telephone number changed.

I asked the Landlord about the amount of the liquidated damages, and if it represents a pre-estimate of the cost to the Landlord of the Tenant breaching the fixed-term tenancy agreement. She said: "If you break the agreement, you do not get the security deposit back."

#2 Repairs and Cleaning Needed Post Tenancy → \$286.50

In the hearing the Agent said:

The cleaning was never done inside. The fridge, the stove - not cleaned – and she left behind some groceries. She was living there. There was pasta sauce splashed everywhere. The washroom was never cleaned. It cost that much to clean it, because the cleaning ladies work for the company. She never cleaned anything.

The Agent said she submitted a cleaning invoice setting out the hourly rate and the time it took to clean, but I was unable to find this document in the evidence submitted by the Landlord. She said: "I don't have hours. Just that labour is \$160.00, materials \$82.00, paint labour \$70.00, plus paint materials."

I noted that this comes to \$312.00, and I asked the Agent about this, but she could not explain it. She said she uploaded the invoice, but it isn't in the documents received by the RTB.

The Tenant said:

I could not move into that suite. It was not cleaned when I moved in. [The previous tenant] handed me the keys as she moved out.

Yes, I made macaroni, but it was not cleaned when I moved in.

I asked the Landlord why the unit needed to be painted, if she had painted it prior to the Tenant's tenancy. The Agent said that the walls were damaged and dirty. She did not submit any photographs of the damage into evidence. The Agent said:

That's the way the cleaning is done, and the painting is necessary. They have to give the next tenant - they need it to be painted. There was black stuff on the walls that can't come out. We don't know what it was.

The Tenant said that the rental unit was not cleaned after the end of the previous tenancy. She said she met the last person to move out. The Tenant said: "It was a female moving out of that apartment. She had red hair. She laughed. We had to wait to get into the apartment until they were finished moving out."

The Landlord said that the floor people were there to put in the new floor - laminate to replace the carpet. The Tenant responded: "There's nothing new about this building."

#3 Unpaid Rent → \$1,325.00

The Agent said that the Tenant is responsible for April 2021 rent. The Agent said:

She has to pay rent for April 2021, because she moved out – she has a responsibility for April's rent. The Tenant must be responsible to give proper notice. One Month Notice to provide. If she has a problem – I am losing the

April's rent there. When you are responsible to give proper notice. Landlord is losing money, that's why we get paid for this.

The Landlord submitted a ledger for the Tenant's rent payments for 2021, which includes payments for January through March, but not for April 2021.

The Tenant said she did not have any comments on this claim.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them how I analyze evidence presented to me. I advised them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

#1 LIQUIDATED DAMAGES → \$662.50

RTB Policy Guideline #4 (PG #4), "Liquidated Damages" states:

This guideline deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of 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

tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- 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.

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. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.

...

[emphasis added]

When asked about the amount claimed for liquidated damages, the Agent merely said that a tenant loses their security deposit if they end the fixed-term tenancy before the scheduled end date. The Agent did not comment on the Landlord's cost anticipated to result from the Tenant ending the tenancy agreement early. I find that the amount claimed by the Landlord as liquidated damages is not a pre-estimate of the Landlord's

anticipated loss at the time of entering into the tenancy agreement; rather, based on the Agent's testimony, I find it is viewed by the Landlord as a penalty for breaking the lease. Accordingly, and pursuant to PG #4, I find that the liquidated damages clause in this tenancy agreement is unenforceable. I, therefore, dismiss this claim without leave to reapply.

#2 Repairs and Cleaning Needed Post Tenancy → \$286.50

Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Policy Guideline #1 "Landlord & Tenant – Responsibility for Residential Premises" states the following:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The Agent spoke of there having been holes in the walls of the rental unit at the end of the tenancy. However, she did not submit any photographs of this damage or describe it as anything beyond normal wear and tear, such as holes for hanging pictures.

The Agent did not submit any photographs of the rental unit to establish that it was not cleaned. The Agent did not submit any evidence of the time or hourly rate to clean the rental unit. Given the Landlord's lack of evidence to support the claims in this category, I find the Landlord has not provided sufficient evidence to prove this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

#3 Unpaid Rent → \$1,325.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

The Tenant acknowledged that she vacated the rental unit on or about March 15, 2021, and that she texted that she was leaving and giving her forwarding address to the Landlord on March 5, 2021.

According to section 45(1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

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

(b) 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.

...

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Accordingly, by giving notice of the end of the tenancy by text on March 5, 2021, the effective date for this notice should have been April 30, 2021, which it was not.

Further, according to sections 45 and 52 of the Act, in order for a notice to end tenancy from a tenant to be effective, the form and content must be in writing and must:

- a) Be signed and dated by the Party giving the notice,
- b) Give the address of the rental unit,
- c) State the effective date of the Notice.

In this case, I find that the Tenant did not give sufficient notice of the end of the tenancy pursuant to the Act. Accordingly, and pursuant to sections 26 and 45 of the Act, I find that the Landlord was eligible for April's rent from the Tenant in this situation. I, therefore, award the Landlord with **\$1,325.00** from the Tenant, pursuant to section 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$662.50 security deposit in partial satisfaction of the Landlord's monetary award.

The Landlord is awarded **\$1,325.00** from the Tenant in this matter. I authorize the Landlord to retain the Tenant's \$662.50 security deposit in partial satisfaction of this award. The Landlord is granted a Monetary Order of **\$662.50** for the remaining amount award owing to the Landlord by the Tenant.

As the Landlord was only partially successful in this Application, I decline to award them with recovery of the \$100.00 Application filing fee.

Conclusion

The Landlord is partially successful in this Application in terms of being granted recovery of unpaid rent for April 2021 of **\$1,325.00**. The Landlord is unsuccessful in their other claims, as they failed to provide sufficient evidence to prove these claims on a balance of probabilities. The other claims are dismissed without leave to reapply.

The Landlord is authorized to retain the Tenant's \$662.50 security deposit in partial satisfaction of this award. The Landlord is granted a Monetary Order of **\$662.50** in complete satisfaction of the award.

This Order must be served on the Tenant by the Landlord and may be filed in the

Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 09, 2021

Residential Tenancy Branch