



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

MNDCL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on October 12, 2021 concerning an application made by the landlord seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord's agent (hereafter called the landlord) testified that the tenants were individually served with the application, notice of this hearing and all evidence by registered mail on September 17, 2021, and copies of the Registered Domestic Customer Receipts and Canada Post cash register receipt bearing that date have been provided for this hearing. The landlord also testified that the application was made on April 9, 2021, and after not hearing from the Residential Tenancy Branch with respect to a hearing date, the landlord sent an email to the Branch on August 12, 2021. The landlord received an automated email reply stating that due to high volumes, someone would reply within 10 business days.

The record shows that a voice mail was left for the applicant on April 21, 2021 to pick up documents for service. Another record shows that on September 9, 2021 an Information Officer called the applicant in response to the landlord's email. The third record shows that the landlord attended at the Residential Tenancy Branch office, confused with the application, and was informed that a hearing had been scheduled and

the landlord was advised to follow instructions on the Notice of Hearing letter. The fourth record shows that the landlord attended the office again the same day, and advised that no voice mail was received on April 21, 2021 and requested copies of the documents.

The Rules of Procedure require an applicant to serve a respondent within 3 days of receiving the hearing package from the Residential Tenancy Branch. I accept the testimony of the landlord, considering the notes made to the file by Information Officers, and I find that the tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for liquidated damages?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim.

Background and Evidence

The landlord testified that this fixed-term tenancy began on April 1, 2021 and was to revert to a month-to-month tenancy after March 31, 2022, however the landlord agreed to give the keys to the tenants earlier, on March 22, 2021, because the apartment was vacant at the time, so that's when the tenancy actually began.

Rent in the amount of \$2,300.00 was payable on the 1st day of each month. On March 5, 2021 the landlord collected a security deposit from the tenants in the amount of \$1,150.00, and no pet damage deposit was collected. The rental unit is an apartment in a UBC building and a copy of the tenancy agreement has been provided for this hearing. The complex was largely vacant during COVID-19, and the landlord gave the tenants 1 month of rent free.

The landlord further testified that the tenants have not paid any rent and vacated the rental unit on April 5, 2021. The tenants told the landlord there was water on the floor and completed a maintenance request on March 31, 2021. The landlord attended the rental unit with a maintenance person and asked the tenants if they had used the tub or shower, to which they replied that they had not. A seal was replaced by the

maintenance person, and the landlord offered that the tenants could move into another apartment, but they insisted on moving out.

The tenancy agreement provides for liquidated damages as follows: “However, if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord’s option, end and in such event the sum of \$1,150.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty.”

The tenants provided a forwarding address to the landlord in writing on April 5, 2021.

The landlord claims liquidated damages of \$1,150.00, an order permitting the landlord to keep the \$1,150.00 security deposit, and recovery of the \$100.00 filing fee.

Analysis

I have reviewed the tenancy agreement, and note that both tenants have initialled the box beside the term for liquidated damages. It is also clear that the tenants have breached the tenancy agreement by moving out of the rental unit prior to the end of the fixed term. I find that the dollar amount of liquidated damages is lawful and reasonable, and the landlord is entitled to \$1,150.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

The *Act* requires a landlord to return a security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant’s forwarding address in writing. If the landlord fails to do either, the landlord must repay double the amount. In this case, the landlord testified that the tenants moved out of the rental unit on April 5, 2021 and gave the landlord a forwarding address in writing on the same date. The landlord’s application was filed on April 9, 2021, which is within the 15 days as required.

I order the landlord to keep the \$1,150.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenants for the difference of \$100.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,150.00 security deposit and I grant a monetary order in favour of the landlord as against the

tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: October 13, 2021

Residential Tenancy Branch