



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RA REALTY ALLIANCE INC.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was scheduled to convene at 1:30 p.m. on September 26, 2022 concerning an application made by the landlord seeking the following relief:

- a monetary order for damage to the rental unit;
- a monetary order for unpaid rent or utilities;
- 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 tenant for the cost of the application.

The landlord was represented at the hearing by an agent, who 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 tenant joined the call.

The landlord was successful in obtaining a substitutional service order permitting the landlord to serve the hearing documents and evidence to the tenant by email. The landlord testified that the documents were sent by email on April 8, 2022. However, the Residential Tenancy Branch re-scheduled the hearing and the tenant was served again by email on September 14, 2022. Copies of the “Read” emails have been provided for this hearing, and I am satisfied that the tenant has been served in accordance with the substitutional service order.

All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for liquidated damages and costs of a guest parking pass?
- Should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent 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 tenant abandoned the rental unit on July 1, 2021. Rent in the amount of \$1,700.00 was payable on the 1st day of each month. On March 28, 2021 the landlord collected a security deposit from the tenant in the amount of \$850.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a strata condominium complex, and a copy of the tenancy agreement has been provided for this hearing.

The tenant failed to pay rent for the month of June, 2021 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided for this hearing which is dated June 6, 2021 and contains an effective date of vacancy of June 19, 2021 for unpaid rent in the amount of \$1,700.00 that was due on June 1, 2021. The tenant did not dispute the Notice, but the tenant sent a text message to the landlord's agent on July 1, 2021 indicating that the tenant had vacated, without paying any rent for June or July, 2021.

The tenancy agreement contains an Addendum, a portion of which states:

6. LIQUIDATED DAMAGES IN THE EVENT OF BREAKING THE LEASE: If the Tenant(s) repudiates or breaches the fixed term tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement as being at an end. In such event, the sum of one month's rent (as of this contract) will be paid by the

Tenant(s) to the Landlord as damages, and not as a penalty, toward the administration costs of re-renting the Rental Unit.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy and a copy has been provided for this hearing. Since the tenant abandoned the rental unit, the landlord did not complete the move-out portion.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$5,535.78:

- \$1,700.00 for June's rent;
- \$1,700.00 for July rent loss;
- \$1,700.00 for liquidated damages;
- \$183.38 for a microwave;
- \$74.90 for paint;
- \$157.50 for cleaning; and
- \$20.00 for a parking pass.

During the tenancy the landlord provided the tenant with a microwave oven at the tenant's request, which the tenant took when exiting the rental unit. The landlord has provided a copy of a receipt dated April 8, 2021 for the purchase, and the landlord claims \$183.38.

The tenant complained about a rough spot on a wall, and due to COVID protocols the landlord delivered a can of paint to the tenant's door, and has provided a copy of the receipt dated April 9, 2021 in the amount of \$74.90. The tenant didn't touch up the paint but took the paint with her when she departed.

The tenant did not clean the rental unit upon exiting, and photographs have been provided by the landlord for this hearing, as well as a receipt for cleaning dated July 3, 2021 for a cost of \$157.50, which the landlord also claims as against the tenant. The photographs were taken on July 1, 2021 after the landlord's agent received the tenant's text message stating that the tenant had vacated.

The landlord also claims \$20.00 for a visitor's parking pass, which the tenant was provided with at the beginning of the tenancy, but did not return at the end of the tenancy. The strata charged \$20.00. The pass is a plastic pass which guests of tenants would put on their dashboard to prevent the strata from towing vehicles that belong to guests of the occupants. A receipt dated July 28, 2021 in that amount has also been provided for this hearing.

The tenant has not provided the landlord with a forwarding address and has not served the landlord with an Application for Dispute Resolution claiming the security deposit. The rental unit was re-rented for August 1, 2021.

Analysis

Firstly, a tenant is required to give a landlord at least 1 month's notice to end a tenancy, and must give it before the date rent is payable under the tenancy agreement. However, a tenant may not end a fixed term tenancy without the written consent of the landlord prior to the end of the fixed term. In this case, the landlord's agent testified that the tenant didn't pay rent for June, 2021 and the landlord served a notice to end the tenancy for unpaid rent. The tenant did not dispute the notice, and did not vacate the rental unit in accordance with the notice, but vacated at the beginning of July, 2021 without any notice to the landlord. Since the tenant did not pay rent of June and did not pay rent for July, 2021, I am satisfied that the landlord has established a monetary claim of \$3,400.00 for unpaid rent.

I am also satisfied in the evidence that liquidated damages were agreed to by the tenant when the tenancy agreement was signed. The tenant ended the tenancy prior to the end of the fixed term, and I find that the landlord is entitled to \$1,700.00 for liquidated damages.

I have also reviewed the move-in condition inspection report and photographs provided by the landlord, and I accept the undisputed testimony of the landlord's agent that the tenant vacated with the new microwave oven and paint which was provided to the tenant by the landlord. I find that the landlord has established claims of \$183.38 for the microwave oven and \$74.90 for paint.

The photographs show that cleaning was required at the end of the tenancy, and I find that the tenant is obligated to pay \$157.50 for cleaning.

The landlord provided the tenant with a plastic visitor parking pass, and I accept the undisputed testimony of the landlord's agent that the tenant did not return it upon vacating and the landlord was required to pay \$20.00 for a replacement.

The *Residential Tenancy Act* states that if a landlord fails to complete a move-in and move-out condition inspection report at the beginning and end of the tenancy, the landlord's right to make a claim for damages against the security deposit is extinguished, and that if the tenant has abandoned the rental unit, the landlord may complete the move-out portion in the absence of the tenant. In this case, the landlord's

agent testified that the move-out portion was not completed because the tenant had abandoned the rental unit. This is not in accordance with the law, however the landlord's right to make a claim against the security deposit for unpaid rent is not extinguished.

Having found that the landlord has established claims of \$3,400.00 for unpaid rent and \$1,700.00 for liquidated damages, as well as \$183.38 for the microwave oven, and \$74.90 for paint, and \$157.50 for cleaning, and \$20.00 for the visitor's parking pass, I order the landlord to keep the \$850.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference totalling \$5,535.78 ($\$1,700.00 + \$1,700.00 + \$1,700.00 + \$183.38 + \$74.90 + \$157.50 + \$20.00 = \$5,535.78 - \$850.00 = \$4,685.78$).

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

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$850.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,785.78.

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: September 26, 2022

Residential Tenancy Branch