# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding URBAN PARK TOWNHOMES C/O APM and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on March 14, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Retention of the security and/or pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on November 8, 2022, and was attended by the Tenant S.A., who was also acting as an agent for the Tenant M.A., and an agent for the Landlord A.O. (the Agent). Neither the Tenant H.G. nor an agent acting on their behalf attended. All testimony provided was affirmed. The Tenant S.A. acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP) on their behalf and on behalf of M.A., and stated that there are no concerns regarding the service date(s) or method(s). As a result, I found them sufficiently served for the purposes of the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). The Agent stated that the Tenant H.G. was sent the NODRP via email on March 18, 2022, as permitted under the tenancy agreement. Pursuant to section 89(1)(f) of the Act and 43(2) and 44 of the regulations, I deem H.G. served on March 21, 2022. I verified that the hearing details contained in the NODRP were correct and noted that neither the Agent nor the Tenant S.A. had difficulty attending the hearing using this information. The hearing therefore proceeded as scheduled despite the absence of H.G. or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

The parties present acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods. The Agent also stated that the Tenant H.G. was sent the Landlord's documentary evidence by email at the same email address as the NODRP, on March 18, 2022, and October 18, 2022. Pursuant to section 89(1)(f) of the Act and 43(2) and 44 of the regulations, I deem H.G. served on March 21, 2022, and October 21, 2022. I therefore accepted the documentary evidence before me from all parties for consideration.

Preliminary Matter #2

The Agent stated that the name listed for the Landlord is not complete and provided me with the full legal name as well as the name the Landlord does business under. The Application was amended accordingly.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to retention of the security and/or pet damage deposit and if not, are the Tenants entitled to their return or double their amounts?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on August 15, 2021, and was set to end on August 31, 2022. It also states that rent in the amount of $2,300.00 is due on the first day of each month and that a security deposit in the amount of $1,150.00 was required. At the hearing the parties confirmed that these are the correct terms for the tenancy agreement, that the security deposit was paid and is still retained in trust by the Landlord, and that the tenancy ended early on February 28, 2022, after the Tenants gave written notice on January 22, 2022, to end their tenancy early as H.G. had moved out and therefore they could no longer afford the rent. A copy of the written notice was submitted for my review.

The Agent stated that term 19 of the tenancy agreement is a liquidated damages clause that states that the Tenants will owe $1,150.00 for liquidated damages if they breach their tenancy agreement by ending the tenancy early. The Agent stated that the Tenants clearly broke their lease by ending the tenancy several months early, and therefore they owe the $1,150.00 to the Landlord for liquidated damages.

The Tenant argued that they should not be held responsible for the liquidated damages fee set out in the tenancy agreement as they do not believe it to be a genuine pre-estimate of the cost of re-renting the rental unit. They also considered the Landlord's Application seeking authority to retain the $1,150.00 security deposit currently held in trust for recovery of the liquidated damages amount to constitute automatic forfeiture of their deposit, which is not permissible. The Tenant argued that as they worked with the property manager to arrange viewings, advertisements were placed for free on sites such as Facebook marketplace, and the rental unit was re-rented by February 8, 2022, the Landlord did not suffer any loss. The Tenant also argued that as the Landlord

required them to have the carpets professionally cleaned, this cost should have been included in the pre-estimate costs for liquidated damages.

The Agent agreed that the rental unit was re-rented quickly, which is why the Landlord has not sought recovery of lost rent, but disagreed that the Landlord suffered no loss and that the liquidated damages amount was not a genuine pre-estimate. The Agent stated that the Landlord has to pay a brokerage to list and re-rent the unit when a lease is broken, as well as pay placement fees and advertising costs. The Agent also argued that the Tenants were well aware of the liquidated damages clause and amount, as they all initialed this clause in addition to signing the tenancy agreement.

Analysis

Based on the documentary evidence and testimony before me, I am satisfied that the Tenants breached their fixed-term tenancy agreement when they gave written notice on January 22, 2022, to end their tenancy on February 28, 2022, rather than August 31, 2022, the end date for the fixed-term, without cause to do so under the Act, such as a breach of a material term of the tenancy agreement on the part of the Landlord. I am also satisfied that the tenancy agreement contains a liquidated damages clause, initialed by all three Tenants, stating that the Tenants will owe $1,150.00 for liquidated damages if they end their fixed-term tenancy early.

Although the Tenant argued that the liquidated damages clause should not be enforceable, I disagree. I do not find that filing a claim against the security deposit withheld by the Landlord in trust for recovery of the liquidated damages amount is the same as an automatic security deposit forfeiture clause, which is prohibited under the Act. I also do not accept the Tenant's argument that the cost of carpet cleaning required by the Tenants at the end of their tenancy agreement should have been factored into this amount, as Policy Guideline #1 and section 35 of the Act clearly set out how a rental unit must be left by a tenant at the end of the tenancy, which is an entirely separate issue from whether liquidated damages are owed.

Finally, I also reject the Tenant's argument that liquidated damages should not be owed because the Landlord did not suffer a loss. First, I am not satisfied this is the case, as the Agent testified that the Landlord did in fact incur a loss for brokerage fees, placement fees, and advertising costs because of the Tenants' early end to their fixed-term tenancy. Further to this, Policy Guideline #4 states that if a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even when

actual damages are negligible or non-existent. As a result, I find that whether the Landlord suffered a loss is irrelevant to enforceability of the liquidated damages clause.

Clause 19 of the tenancy agreement clearly states that the liquidated damages clause is not a penalty and I find the amount, which is equivalent of one-half months rent, is not extravagant in comparison to the greatest loss I am satisfied could have been suffered by the Landlord to have the rental unit re-rented early. It also does not require that a greater amount be paid by the Tenants if they fail to pay the initial liquidated damages amount, and is not a lump sum to be paid on occurrence of several events, some trivial and some serious. As a result, I am satisfied that the liquidated damages clause is not a penalty and is in fact a genuine pre-estimate of the costs that may be incurred by the Landlord in the event that the tenancy agreement is terminated by the Tenants early.

Based on the above, I find that the liquidated damages clause is enforceable and that the Tenants therefore owe the Landlord $1,150.00. As the Landlord was successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. During the hearing the parties agreed that condition inspections and reports were completed at the start and the end of the tenancy in compliance with the Act and the regulations, and that none of the criteria set out under sections 38(3) and 38(4) of the Act apply. As I am satisfied that the tenancy ended on February 28, 2022, the parties agreed that the Landlord received the Tenants' forwarding address in writing on or before this date, and the Landlord filed the Application seeking retention of the $1,150.00 security deposit on March 14, 2022, I therefore find that the Landlord complied with section 38(1) of the Act.

As a result, and pursuant to section 72(2)(b) of the Act, I therefore authorize the Landlord to retain the Tenants' $1,150.00 security deposit in partial repayment of the $1,250.00 owed. Pursuant to section 67 of the Act, I also grant the Landlord a Monetary Order in the amount of $100.00, and I order the Tenants to pay this amount to the Landlord.

## Conclusion

I grant the Landlord's Application seeking recovery of liquidated damages and the filing fee for the Application, as well as retention of the security deposit against these amounts.

Pursuant to section 72(2)(b) of the Act, the Landlord may retain the $1,150.00 security deposit in full.

Pursuant to section 67 of the Act, I also grant the Landlord a Monetary Order in the amount of **$100.00**. The Landlord is provided with this Order in the above terms and 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 Branch under Section 9.1(1) of the Act.

Dated: December 8, 2022

Residential Tenancy Branch