



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTLEBROOK INCOME PROPERTIES
LTD. and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (Application) filed by the Landlord under the *Residential Tenancy Act* (the Act) on March 16, 2022, seeking:

- Recovery of unpaid rent;
- Compensation for monetary loss or other money owed;
- Compensation for the cost of repairing damage caused by the Tenants, their pets, or their guests;
- Recovery of the filing fee; and
- Retention of the security deposit and pet damage deposit.

The hearing was convened by telephone conference call on November 15, 2022, at 1:30 P.M. (Pacific Time), and was attended by the Landlord's agent A.G. (the Agent), who provided affirmed testimony. No one appeared on behalf of the Tenants. The Agent was 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 Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Notice of Dispute Resolution Proceeding (NODRP), which includes a copy of the Application and the Notice of Hearing, and the documentary evidence before me on behalf of the Landlord, was sent to each of the Tenants on March 25, 2022, by registered mail at the forwarding address provided by the Tenants.

The Agent provided me with the registered mail tracking numbers, which I have recorded on the cover page of this decision. The Agent stated that although notice cards were left, the registered mail packages were never picked up and were ultimately returned. The Agent stated that they were also sent to the primary email address listed for the Tenants in the tenancy agreement as an address for service. Pursuant to sections 88(c), 89(1)(c), and 90(a) of the Act, I therefore find the Tenants deemed served on March 30, 2022, five days after the registered mail was sent.

Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Landlord by email on March 23, 2022. Based on the above, I find that the Landlord served the Tenants with the NODRP and the documentary evidence before me on behalf of the Landlord for the purpose of section 59(3) of the Act and rule 3.1 of the Rules of Procedure. I therefore accepted the documentary evidence before me on behalf of the Landlord for consideration.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. I verified that the hearing information contained in the NODRP was correct, and I note that the Agent had no difficulty attending the hearing on time using this information. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenants were deemed served with the NODRP for the purpose of the Act on March 30, 2022, I therefore commenced the hearing as scheduled, despite the absence of the Tenants or an agent acting on their behalf. Although someone attempted to call into the teleconference at 1:43 P.M., and I paused the hearing to await their attendance, they disconnected without ever joining the teleconference. I therefore continued the teleconference and although the teleconference remained open for additional participants to join the full duration of the 32-minute hearing, no one attended the hearing on behalf of the Tenants.

The Agent was 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 Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was 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 in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address listed in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid/lost rent?

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

Is the Landlord entitled to compensation for the cost of repairing damage caused by the Tenants, their pets, or their guests?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to the retention of the security deposit and/or pet damage deposit?

Background and Evidence

The one-year fixed term tenancy agreement in the documentary evidence before me indicates that the fixed term commenced on May 1, 2021, and was set to end on April 30, 2022. It also states that:

- rent in the amount of \$2,850.00 is due on the first day of each month;
- the Tenants are responsible for \$94.00 in utilities each month in accordance with the utility addendum;
- the Tenants are liable for liquidated damages in the amount of \$2,850.00 if they breach the tenancy agreement by ending it early or causing it to be ended early;
- that the Tenants are required to pay a \$150.00 move-out fee; and
- a security deposit and pet damage deposit are required in the amount of \$1,425.00 each.

During the hearing, the Agent stated that the deposits are still held in trust. The Agent stated that the Tenants gave written notice on January 12, 2022, via email, that they were ending their tenancy early on February 28, 2022. A copy of this email was provided for my review. The Agent stated that on February 7, 2022, an email was sent to the Tenants outlining the move-out process, and reminding them of the liquidated damages clause. A copy of this email was also submitted for my review. The Agent stated that the parties mutually agreed to complete the move-out condition inspection on February 28, 2022, at 3:00 PM, but when they attended, the Tenants were not there. The Agent stated that they sent the Tenants the Notice of Final Opportunity to Schedule a Condition Inspection (#RTB-22) via email on March 1, 2022, with a move-out condition inspection date and time of March 7, 2022. The Agent stated that the Tenants also failed to attend this inspection, at which time they entered the rental unit, found it vacant, and completed the move-out condition inspection and report in the absence of the Tenants pursuant to section 35(5) of the Act.

The Agent stated that the Tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy as required by section 37(2)(a) of the Act, resulting in the need for the Landlord to pay for cleaning and repairs. The Landlord stated that the carpets were smelly and stained, likely as the result of pets, that light bulbs needed to be replaced, and that repairs needed to be completed, such as re-attaching broken toilet paper holder(s). The Agent therefore sought \$1,214.80 in cleaning and repair costs, and submitted photographs, the move-in and move-out condition inspection reports, and a monetary order worksheet in support of this claim.

The Agent stated that the rental unit was ultimately re-rented for April 1, 2022, at the same rental rate, and as a result they withdrew the Landlord's claim for reimbursement of lost rent and utilities for April. However, the Agent stated that the Landlord is still seeking March rent in the amount of \$2,850.00 and March utilities in the amount of \$94.00, as the Tenants failed to vacate on time and failed to leave the rental unit reasonably clean and undamaged, resulting in an inability for the Landlord to re-rent the unit for March.

Finally, the Agent sought \$2,850.00 for liquidated damages and \$150.00 for the move-out fee, as well as recovery of the filing fee and retention of the deposits against the amounts owed.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me, I find that a tenancy to which the Act applies existed between the parties, which ended on February 28, 2022, after the Tenant's gave written notice to end their tenancy early therefore breaching the terms of their fixed-term tenancy agreement. I also find that:

- rent in the amount of \$2,850.00 was due under the tenancy agreement at the time the tenancy ended, along with \$94.00 in utilities;
- the Tenants provided their forwarding address in writing via email to the Landlord on March 7, 2022;
- the Tenants breached section 37(2) of the Act by failing to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for wear and tear;
- the Landlord suffered the losses stated because of the Tenants' breach of section 37(2) of the Act and their failure to attend either scheduled move-out condition inspection;
- the tenancy agreement requires the tenants to pay a \$150.00 move-out fee in accordance with strata bylaws, which they did not pay; and
- the tenancy agreement contains an enforceable liquidated damages clause.

Based on the above, I therefore grant the Landlord recovery of the following amounts pursuant to section 7 of the Act and the above noted relevant sections of the Act:

- \$2,850.00 in lost rent for March of 2022;
- \$94.00 in lost utilities for March of 2022;
- \$150.00 for an unpaid move-out fee;
- \$2,850.00 for liquidated damages; and
- \$1,214.80 for recovery of cleaning and repair costs.

As the Landlord was successful in their claims, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Having made these findings, I will now turn to the matter of the security and pet damage deposits. As there is no evidence before me that the Landlord extinguished their rights in relation to either deposit, I therefore find that they did not. I am also satisfied that the Landlord filed the Application seeking retention of the deposits within the timeline set out under section 38(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenants' \$1,425.00 security deposit and \$1,425.00 pet damage deposit in partial repayment of the above noted amounts owed.

As a result of the above, I find that the Landlord is entitled to a Monetary Order pursuant to section 67 of the Act in the amount of \$4,408.80; \$7,258.80 owed, less the \$2,850.00 in deposits retained, and I order the Tenants to pay this amount to the Landlord.

Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenants' security and pet damage deposits.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$4,408.80**. 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 14, 2022

Residential Tenancy Branch