



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 MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking the following relief:

- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- 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 security deposit or pet damage deposit; and
- to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The tenant has not provided any evidentiary material, and the parties agree that all evidence of the landlord has been provided to the tenant. Therefore, all evidence of the landlord has been reviewed, and the evidence I find relevant to the landlord's application is considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on July 1, 2022 and was to revert to a month-to-month tenancy after June 30, 2023. However, the tenant vacated the rental unit on September 7, 2022. Rent in the amount of \$4,500.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$2,250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a penthouse in a building that has 128 units in total, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on September 7, 2022 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided for this hearing, and it is dated September 7, 2022 and contains an effective date of vacancy of September 17, 2022 for unpaid rent in the amount of \$4,500.00 that was due on September 1, 2022.

The landlord has also provided a copy of an email from the tenant to the landlord dated September 7, 2022 indicating that the tenant had vacated the rental property, "available as of today." It also contains the tenant's forwarding address. No other notice to end the tenancy was received from the tenant.

A move-in condition inspection report was completed at the beginning of the tenancy, however a move-out condition inspection report was completed on September 7, 2022 in the absence of the tenant, and a copy was provided to the tenant on October 6, 2022, a copy of which has also been provided for this hearing. The landlord's agent testified that the tenant was not provided with any opportunities to complete the move-out condition inspection, and another agent of the landlord added the tenant's forwarding address to the move-out portion. The tenant has not served the landlord with an application seeking recovery of the security deposit.

The tenancy agreement contains a liquidated damages clause of \$2,250.00, not as a penalty, but in addition to any other right or remedies available to the landlord. The landlord's agent testified that the liquidated damages clause is to cover turn-over costs to put the rental unit back on the market, viewings and anything related to re-renting.

The landlord has provided a revised Monetary Order Worksheet, in which the landlord makes the following claims, totaling \$9,150.00:

- \$2,250.00 for liquidated damages;
- \$4,500.00 for rent owing;
- \$600.00 for cleaning and supplies;
- \$50.00 for repair to a kitchen cabinet;
- \$700.00 for blinds; and
- \$1,050.00 for painting.

The landlord has provided an Invoice dated September 22, 2022 in the amount of \$600.00 for cleaning and supplies; \$50.00 for repair to a kitchen cabinet and \$700.00 for blinds, but does not know what was wrong with the kitchen cabinet or the blinds. The landlord's agent is not sure when the rental unit was last painted.

The rental unit was re-rented on October 1, 2022 for \$4,000.00 per month, and was advertised during the whole month of September, 2022 commencing on September 12, 2022, after learning that the tenant was not returning. The market goes up and down seasonally.

Photographs have also been provided for this hearing, which the landlord's agent testified were taken during the move-out condition inspection on September 7, 2022.

The tenant testified that he gave ample notice to end the tenancy to another agent of the landlord. There was constant harassment from the landlord who thought the tenant was using the rental unit for an Air BNB rental, which was not the case. The tenant was called to the office of the landlord, thinking that the tenant was residing in another penthouse in the building, and said that the tenant had been "flagged." It was harassment.

The blinds were in the same condition when the tenant moved in. The tenant was only there for 2 months, so a claim for painting is ridiculous, and the claim for cleaning is overboard.

The tenant also testified that the market was crazy, so the landlord could have re-rented for more than \$4,500.00 per month, in the tenant's opinion.

SUBMISSIONS OF THE LANDLORD:

When advertised, the market changed from month-to-month, and by the end of the year, not many are willing to rent compared to summer time, especially considering the size of the rental unit and the cost.

SUBMISSIONS OF THE TENANT: None

Analysis

Firstly, a tenant may not end a tenancy prior to the end of the fixed term unless agreed to in writing by the landlord. In this case, the tenant vacated earlier than the end of the fixed term. I have reviewed the tenancy agreement, which clearly sets out liquidated damages, not as a penalty, and I accept the testimony of the landlord's agent that the liquidated damages was meant to cover turn-over costs to put the unit on the market, viewings and anything related to re-rent. The tenancy agreement has been signed by the tenant, and I am satisfied that the landlord has established a claim of **\$2,250.00** for liquidated damages.

Even in a month-to-month tenancy, a tenant may give notice to end a tenancy, but that notice must be given the day before rent is payable. In this case, the only evidence of the tenant's notice to end the tenancy is the September 7, 2022 email from the tenant indicating that the tenant had vacated. I find that the landlord has suffered a loss of 1 month's rent payable under the tenancy agreement, or **\$4,500.00**.

In order to be successful in a claim for damages, the onus is on the landlord to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out. It also states that a landlord must give a tenant at least 2 opportunities to schedule

the inspections. In this case, there is no evidence that the landlord gave the tenant any opportunities to schedule the move-out portion of the report, although the landlord had a forwarding address of the tenant. The *Act* also specifies that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit, and that the landlord may make the inspection and complete and sign the report without the tenant if the landlord has offered the tenant at least 2 opportunities to participate and the tenant does not participate on either occasion or the tenant has abandoned the rental unit. There is no evidence that the tenant abandoned the rental unit.

The landlord has provided a portion of a move-in condition inspection report showing that no repairs were to be completed at the start of the tenancy, and that the tenant agreed that the report fairly represented the condition of the rental unit. It contains paragraphs marked A to I, and skips to W.

The other Condition inspection report contains checkmarks only for all areas of the rental unit at move-in, which indicates “clean” according to the legend, and several comments at move-out, such as holes in the walls in the entrance and living room, as well as broken blinds in the living room and bedrooms. It also shows that the walls/ceiling in the bedrooms needed re-painting, but there is no evidence as to when the rental unit was last painted. The useful life of interior paint is 4 years, and in the absence of any evidence as to when the rental unit was last painted, I am not satisfied that the landlord has established that the rental unit didn’t already need painting. Nothing in the Invoice indicates patching or repairing holes. Therefore, I dismiss the landlord’s claim for painting.

The photographs provided by the landlord show that the oven or stove was not cleaned at the end of the tenancy or the grid above the microwave oven. The move-in condition inspection report shows that everything was clean, which was agreed to by the tenant in writing. The move-out condition inspection report shows that the kitchen cupboards were not clean at the end of the tenancy, as well as the sink/counter/taps, range and fan/oven, refrigerator, and floors. I have also reviewed the landlord’s photographs. The Invoice shows a charge of **\$500.00** for cleaning and **\$100.00** for cleaning material, and I am satisfied that the landlord has established that claim.

The tenant disputes damage to the blinds indicating that the blinds were damaged when the tenant moved in, however, the move-in portion of the report shows that there were no repairs required at the beginning of the tenancy. A tenant is required to repair any damage to the residential property except for normal wear and tear. The tenant agreed

in writing that there were no repairs required at the beginning of the tenancy, and I find that the landlord has established a claim of **\$700.00**.

The move-out condition inspection report indicates that the cupboards/drawers in the kitchen were dirty at the end of the tenancy, but there is no evidence that the tenant caused any damage to the cabinet hinges. Therefore I dismiss the landlord's \$50.00 claim for cabinet repair.

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

A landlord must return a security deposit to a tenant or make an application seeking to keep the security deposit 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. In this case, the landlord received the tenant's forwarding address on the date that the tenant moved out of the rental unit, September 7, 2022 and filed the application seeking to keep it on September 23, 2022, which is 16 days later. Therefore, I find that the landlord must reimburse the tenant double the amount.

Having found that the landlord is owed \$2,250.00 for liquidated damages, \$4,500.00 for unpaid rent, \$600.00 for cleaning, \$700.00 for broken blinds, and \$100.00 for recovery of the filing fee, and the tenant is entitled to \$4,500.00 for double the amount of the security deposit, I set off those amounts, and I grant a monetary order in favour of the landlord as against the tenant for the difference of \$3,650.00 ($\$2,250.00 + \$4,500.00 + \$600.00 + \$700.00 + \$100.00 = \$8,150.00 - \$4,500.00$ (double the security deposit) = \$3,650.00). The tenant must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby 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 \$3,650.00.

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: June 25, 2023

Residential Tenancy Branch