



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNRL-S, MNDCL, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking 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 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 parties agree that all evidence has been exchanged, and all evidence that I find relevant to the 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for liquidated damages, parking fees and late rent fees?
- 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 April 5, 2022 and was to revert to a month-to-month tenancy after April 30, 2023, but the tenant vacated the rental unit on or about September 16, 2022. Rent in the amount of \$1,300.00 was payable on the 1st day of each month. On March 25, 2022 the tenant paid a security deposit to the landlord in the amount of \$650.00 as well as a pet damage deposit in the amount of \$650.00, both of which are still held in trust by the landlord. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that the tenant gave notice to end the tenancy to another agent of the landlord on August 13, 2022 and returned the keys on October 4, 2022 in an envelope that contained the tenant's forwarding address. A copy of the tenant's notice to end the tenancy has been provided for this hearing, which is an email dated August 13, 2022 with an effective date of vacancy of September 15, 2022.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,690.00:

- \$1,300.00 September 2022 Rent;
- \$40.00 September 2022 parking;
- \$50.00 Late Fees;
- \$1,300.00 Liquidated Damages – Lease Break.

The landlord's agent also testified that the tenant ledger, a copy of which has been provided for this hearing shows that rent for September, 2022 was paid on September 19, 2022, and there is no record of it being returned for insufficient funds, but late. The tenancy agreement provides for a late fee of \$25.00. The tenant was also late with the rent on July 8 and a late fee was applied to the ledger on July 22, 2022. The landlord claims a total of \$50.00 for late fees.

The tenancy agreement also provides for liquidated damages in the amount of \$1,300.00, not as a penalty, for breaking the lease, and the landlord claims that amount from the tenant.

The landlord makes no claim for damages or for damages caused by a pet.

The tenant testified that she moved out of the rental unit at the beginning of September, having given a notice to end the tenancy on August 15, 2022 and received no response from the landlord. The tenant mailed the keys to the head office of the landlord company after reaching out to agents locally, but no one would answer the tenant.

When the landlord's agent finally answered the tenant's email about moving out, he also sent the tenant a form to fill out to get access to show the rental unit at any time prior to moving out without any notice to the tenant, but the tenant replied that the form would not be signed. The email of the landlord's agent is dated August 14, 2022 which states that the tenant gives permission for the landlord to access the rental unit from 9:00 a.m. to 8:00 p.m. until the date of termination. The email also stated that the tenancy would end at the end of September, 2022, which the tenant agreed to. The tenant did not feel comfortable signing the form, was still working full time and has a dog. Again the landlord did not respond to the tenant's email. The keys were returned to the landlord on September 12, 2022 by registered mail.

The tenant didn't pay rent for September, 2022 because the security deposit would cover that and the tenant couldn't afford to pay the security deposit for a new rental. The tenant didn't feel safe in the apartment and was in contact with the landlord about that since May, but never received any responses and no one would ever answer the phones. The tenant did speak to 2 agents, who were the only people who ever responded, but they indicated that it was not their department and would pass on the information to the agent who only responded on August 18.

The tenant consents to the landlord keeping the security deposit and pet damage deposit to cover the rent for September.

With respect to the landlord's claim for liquidated damages, the tenant testified that she had been trying to get help from the landlords because the tenant did not feel safe. The tenant told the landlord that police told the tenant to stay inside the apartment multiple times because they were searching for someone. A homeless encampment was going up in flames, and a copy of the news article has been provided for this hearing. There were people shooting up drugs and having sex under the tenant's apartment, and received no responses from the landlord. When moving in, the tenant had asked the listing agent if the area was safe, and he said, "A few years ago I wouldn't let my mother or daughter live here, but now I would." The agent of the landlord did email the tenant on August 18, 2022 which touched on some of those issues, but the tenant had given notice to end the tenancy the day before, and had been trying to get help since May with no responses. The tenant

sent the notice to end the tenancy on August 12 by email and again on August 17 as a courtesy.

The form that was sent to the tenant didn't say that the landlord would seek access on notice, and the tenant didn't believe that notice would be given to enter. A couple of times someone would arrive without any form of notice, including the day after the tenant moved in; a man knocked on the door while the tenant was getting into the bathtub, with no notice. The tenant let him in. However, another time windows were supposed to be done, but they arrived when the tenant was not home, and then received a note asking to get in.

The landlord also charged 10% to pay rent online, which the tenant paid every month.

SUBMISSIONS OF THE LANDLORD'S AGENT:

Based on the facts and the tenant leaving the suite, the landlord's agent would assert that proper notice to end the tenancy was offered to the tenant at the time, which the tenant refused to sign, albeit because of the permission issue. The landlord's agent totally sympathizes with the issues, and does not dispute how the tenant feels other than to extend empathy.

SUBMISSIONS OF THE TENANT:

The tenant paid online, which was what she was told and that an automatic withdrawal would not result in the 10% fee. With notice, the tenant would have allowed showings, but there was no contact by the property manager.

Analysis

I have reviewed the tenant ledger provided by the landlord which indicates that September's rent was not paid on September 1, 2022 and the tenant acknowledges that. A landlord may only claim against a pet damage deposit for damages caused by a pet. The tenant consents to the landlord keeping the security deposit and pet damage deposit for the unpaid rent for September, 2022. Since the tenant agrees, I order the landlord to keep the deposits to cover the unpaid rent.

With respect to parking, I accept the undisputed testimony of the tenant that the tenant vacated the rental unit at the beginning of September, and therefore did not use the parking space. Therefore, I dismiss the landlord's claim for parking.

I have also reviewed the tenancy agreement which provides for a late fee of \$25.00 for each month that rent is late. The tenant ledger shows 2 late payments; July and September, 2022. The tenant's notice to end the tenancy is dated August 12, 2022

effective September 15, 2022. The tenant has also provided evidence of having returned the keys to the landlord by Xpresspost on September 12, 2022, and I find that the landlord has established a claim of \$50.00 for late fees.

With respect to liquidated damages, I accept the undisputed testimony of the tenant that numerous requests were made for the landlord to deal with the disruptions of drug users and people having sex under the tenant's apartment. I also accept the undisputed testimony that the tenant did not feel safe and could not get the attention of the property manager, and multiple emails to the landlord have been provided by the tenant for this hearing. Therefore, I find that the tenant was justified in ending the tenancy early, and I dismiss the landlord's application for liquidated damages.

Having found that the tenant is liable for \$50.00 in late fees, I also find that the landlord is entitled to recovery of the \$100.00 filing fee for the cost of this application.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$150.00. 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 \$150.00.

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: July 13, 2023

Residential Tenancy Branch