



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APILANO PROPERTY MANAGEMENT SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on September 19, 2023 concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; 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 tenants for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and called 1 witness who also gave independent affirmed testimony. One of the tenants also attended, gave affirmed testimony, and indicated that the other named tenant was not served. I made a finding, considering a Substitutional Service order that both tenants had been served in accordance with the order.

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 tenants for unpaid rent?
- 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 November 1, 2022 and was to revert to a month-to-month tenancy after October 31, 2023. However, the tenants vacated the rental unit on or about December 15, 2022. Rent in the amount of

\$2,300.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,150.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided for this hearing.

A move-in condition inspection report was completed at the beginning of the tenancy and a copy has been provided for this hearing. It is not dated, but signed by a tenant and by a landlord showing a move-in date of November 1, 2022.

Also provided by the landlord are 2 pest control documents dated October 27, 2022 and November 17, 2022. On October 27, 2022 other units were also treated. The tenants raised issues verbally to the landlord that they were seeing pests in the unit. On November 17, 2022 notice was posted and a cockroach spray was administered. No live activity was found during that treatment.

The landlord's agent further testified that on November 8, 2022 the tenants gave notice to end the tenancy effective December 15, 2022. The landlord did not accept it as a formal notice because it was not effective on the last day of the month, and the tenancy was not on a month-to-month basis. Rent was paid in full for the month of November, 2022, but no rent was paid for December, 2022. The landlord's agent has not received the tenants' forwarding address in writing.

A move-out condition inspection report was completed in the absence of the tenants; the landlord determined that the tenants had abandoned the rental unit so the landlord did not provide at least 2 opportunities to schedule the move-out condition inspection. The tenants dropped off the keys.

The landlord started to advertise the rental unit on December 16, 2022, but has not provided any evidence to substantiate the date or the amount. The landlord's agent testified that a new tenancy agreement for a new tenant commenced on February 1, 2023.

The tenancy agreement provides for liquidated damages if the tenant ends the tenancy prior to the end of the term in the sum of \$1,150.00, as an agreed pre-estimate of the landlord's cost of re-renting.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$5,750.00:

- \$2,300.00 for December, 2022 rent;
- \$2,300.00 for January, 2023 rent; and
- \$1,150.00 for the security deposit.

The landlord's witness testified that the move-in condition inspection report was completed by the parties on November 1, 2022. The building manager completed a move-out condition inspection report, but the tenants were not present. A copy has not been provided for this hearing.

The landlord's witness disputes that the tenants gave a forwarding address in writing when the keys were returned by the tenants.

The tenant testified that the rental unit was not livable and had not been taken care of. When the tenants received the keys and went there with the building manager, and a move-in condition inspection report was to be done. The tenants pointed out things, such as a big hole behind the fridge where mice were going through and urine everywhere. The tenants paid the security deposit on October 21, 2022 and were told the rental unit would be in good condition.

The tenant also testified that the landlord gave a notice to inspect, and a copy has been provided for this hearing. It is dated November 3, 2022 and states that the Move-In Suite Inspection will take place on November 7, 2023 between 10:00 AM – 3:00 PM. It is incorrect for the landlord to say that it was done prior to moving in, and the other tenant doesn't remember signing a report.

On November 3, 2022 the landlord advised that a guy was coming to deodorize the suite and that the tenants shouldn't use the kitchen for some time. However, the fellow who arrived was a pest control person, who said that the tenants should have been given notice of the treatment, and that the tenants had to be out for 3 hours. The tenant had to move his mother to his sister's house on November 8, after the landlord didn't show up for the November 7 move-in condition inspection. There were still insects just before the tenants moved out. Numerous photographs and video evidence have been provided for this hearing. The tenant testified that they were taken inside the suite.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The evidence shows that there was a tenancy agreement and a move-in condition inspection report. The tenants moved out without giving sufficient notice, incorrect, leaving the landlord in a situation of financial losses due to the fact. The landlord made attempts to assist the tenants with issues that they raised, but they left, breaking the lease anyway.

SUBMISSIONS OF THE TENANT:

The tenants had a lot of financial losses as a result of not using the kitchen, moving expenses, and having to move out in the winter months.

Analysis

Firstly, a tenant does not forfeit a security deposit for liquidated damages, even if that is contained in the tenancy agreement. The law requires a landlord to claim against a security deposit or return it in full to a tenant 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's agent and witness testified that the tenants did not provide a forwarding address in writing. I accept that testimony, considering that the landlord was successful in obtaining a substitutional service order.

The landlord's agent testified that the landlord did not accept the tenants' notice to end the tenancy, and determined that the tenants abandoned the rental unit. However, there is no evidence that the tenants left any belongings in the rental unit, and I disagree that the tenants abandoned the rental unit.

There is no question that the tenants left the rental unit without paying any rent for December, 2022. Since rent was payable on the 1st day of each month, the tenants' notice to end the tenancy would not take effect until the end of December, 2022 if the tenancy was on a month-to-month basis. Even though the tenants vacated on December 15, 2022, the tenants were still required to pay rent for the month. I find that the landlord has established \$2,300.00 for December's rent.

The landlord is required by law to do whatever is reasonable to mitigate any loss suffered for any rent after December, 2022, by establishing that the rental unit was advertised for rent within a reasonable time for the same amount of rent, or less. In this case, the landlord's agent testified that it was advertised on December 16, 2022, but the landlord knew on November 8, 2022 that the rental unit would be vacant by December 15, 2022. The landlord has not provided any evidence to substantiate the advertisements, nor at what amount it was advertised for. Therefore, I am not satisfied that the landlord has established that the tenants are responsible for rent for the month of January, 2023.

The tenancy agreement provides for liquidated damages in the amount of \$1,150.00 if the tenants vacate prior to the end of the fixed term, and they did. The tenant's position

is that the rental unit was not livable, and the tenants were justified in ending the tenancy. The tenants gave notice to end the tenancy just 7 days after moving in. Perhaps that landlord didn't eradicate the pest problem within a reasonable time, or notify the tenants that an exterminator would be attending, but I am not satisfied that the tenants have established that the tenants were justified in ending the tenancy earlier than the date of the fixed term. The tenants had alternative options for correcting any breach by the landlord. I find that the tenants are obligated to pay the liquidated damages to the landlord.

Since the landlord has been partially successful with the application, the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

Having found that the landlord has established a monetary claim of \$2,300.00 for December's rent and \$1,150.00 for liquidated damages, and recovery of the \$100.00 filing fee, I order the landlord to keep the \$1,150.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord as against the tenants for the difference in the amount of \$2,400.00. The tenants 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 order the landlord to keep the \$1,150.00 security deposit and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,400.00.

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: September 19, 2023

Residential Tenancy Branch