

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenant's cross Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord Y.Q. attended the hearing for the Landlord.

The Tenant Z.L. attended the hearing for the Tenant.

### **Service of the Landlord's Notice of Dispute Resolution Proceeding and the Landlord's Evidence**

The Tenant testified that they received the Notice of Dispute Resolution Proceeding and the corresponding evidence for the Landlord's application.

### **Service of the Tenant's Notice of Dispute Resolution Proceeding and the Tenant's Evidence**

The Landlord testified that they did not receive the Tenant's Notice of Dispute Resolution Proceeding or the corresponding evidence for the Tenant's application. The solution of immediate service by email was canvassed with the Landlord and the Tenant and the parties agreed in order to proceed with the hearing.

At approximately 10:11 AM on the hearing date, the Landlord testified that they had received the Tenant's emails containing the Tenant's Notice of Dispute Resolution Proceeding and the corresponding evidence. I granted the Landlord's request for a brief moment to review the Tenant's application and evidence.

After using a brief pause to review the Tenant's cross application and evidence, the Landlord affirmed that they were ready to proceed. The Landlord stated that they would not need to submit additional evidence to be able to respond to the Tenant's cross application. The Landlord elaborated that their evidence from their own application will be sufficient to address the Tenant's claims.

Given the above, and under section 71 of the Act, I find that the Landlord has been sufficiently served with the Tenant's Notice of Dispute Resolution Proceeding and the Tenant's evidence.

### **Issues to be Decided**

Is the Landlord entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord authorized to retain all or a portion of the Tenant's security deposit? Or is the Tenant entitled to a monetary order for the return of all or a portion of their security deposit?

Is the Landlord entitled to recover the filing fee for their application?

Is the Tenant entitled to recover the filing fee for their application?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The written tenancy agreement and addendum was provided showing that this fixed-term tenancy began on March 1, 2024, with the fixed-term portion scheduled to end on February 28, 2025. The monthly rent was \$2,000.00, and due on the first day of the month. The Tenant paid security deposit in the amount of \$1,000.00, and the Landlord continues to hold the security deposit in trust. The rental unit is a basement suite of a detached house, and the Tenant rents the entire basement suite under this tenancy agreement.

The parties agreed that the forwarding address was received by the Landlord on November 10, 2024.

Regarding how the tenancy ended, the Landlord testified that the tenancy ended on October 31, 2024, when the Tenant breached the fixed-term tenancy agreement and

vacated the rental unit. The Landlord stated that on October 4, 2024, their property manager informed the Landlord that the Tenant wanted to move out of the rental unit which prompted the Landlord to begin searching for a new tenant. The Landlord affirmed that on October 30, 2024, they received from their property manager a move out video recorded by the Tenant. The Landlord testified that they received keys to the rental unit sometime in November of 2024. The Landlord stated that they successfully found a new tenant and signed a new tenancy agreement which became effective on January 17, 2025.

On the same topic regarding how the tenancy ended, the Tenant testified that they sought and received the Landlord's approval to assign their fixed term tenancy agreement to an assignee. The Tenant stated that they located an assignee candidate and that the Landlord's mother met with the assignee candidate on October 28, 2024, where the Landlord's mother declined the assignee candidate citing that the rental unit cannot be leased to two people at the same time.

Regarding whether there was an assignment agreement created, the Landlord declared that the Landlord was aware of the Tenant's request and that the Landlord did not provide approval to the Tenant to assign the tenancy. The Tenant disputed the Landlord's declaration and submitted text message screenshots from September 29 and October 5 of 2024 to demonstrate the Landlord's approval. The Tenant testified that there was no written assignment agreement because the Landlord's property manager and agent agreed to take over and manage the assignment process.

Regarding the Landlord's compensation request for liquidated damages in the sum of \$2,000.00, the Landlord testified that they do not know the definition for liquidated damages. The Landlord stated that the Landlord incurred a financial loss of approximately \$1,000.00 to re-rent the property because of listing agent fees. The Landlord affirmed that had the tenancy ended after the fixed term the Landlord would have had been better prepared to find a new tenant. The Landlord elaborated that in their experience the rental unit typically takes around two months to successfully rent.

The Tenant requested for a monetary order for the return of the security deposit plus the doubling penalty provided for in the Act, with a claimed amount of \$2,049.72.

## **Analysis**

### **Is the Landlord entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?**

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation

3. The value of the damage or loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline #4 provides guidance on liquidated damages, the relevant sections read:

*A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.*

*There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:*

- *A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.*
- *If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.*
- *If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.*

*If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.*

I have examined the tenancy agreement and addendum where section 7(a) of the addendum states:

*If the Tenant ends the fixed term tenancy before the end of the original term as set out in the contract, the Landlord may, at the Landlord's option treat this Tenancy Agreement as being at an end. In such event, the sum of ONE month's rent shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty to cover the administration costs of re-renting the said premises. The Landlord and the Tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the Landlord from exercising any further right of pursuing any other remedy available in law or in equity, including but not limited to, damages to the premises and damages as a result of rental income due to the Tenant's breach of the term of this agreement*

In this case, based on the Landlord's own testimony that they unaware of the definition of the term liquidated damages, combined with the fact that the tenancy agreement was

managed for the most part by the Landlord's property manager and agent, I find that the Landlord did not submit sufficient evidence to demonstrate that the liquidated damages clause on the addendum, valued at the equivalent of one month's worth of rent, was a genuine pre-estimate of the Landlord's loss in the event of a breach of the fixed term tenancy agreement. For example, the Landlord provided an account of their costs to re-rent at approximately one thousand dollars for the agent fees, which would only constitute half of the Landlord's proposed loss under the liquidated damages clause. Moreover, I find that the Landlord failed to provide any meaningful estimates to support the idea that the liquidated damages clause was a genuine pre-estimate of the Landlord's anticipated loss should the fixed term tenancy agreement be breached ahead of the fixed-term's end date.

Consequently, based on the above, I find it more likely than not that the liquidated damages clause constitutes as a penalty and is therefore not enforceable.

Section 34 of the Act states that unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

Section E of Policy Guideline #19 states:

*Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. When a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment. It is possible that the original tenant may be liable to the landlord under the original agreement.*

*For example:*

- the assignment to the new tenant was made without the landlord's consent; or*
- the assignment agreement doesn't expressly address the assignment of the original tenant's obligations to the new tenant in order to ensure the original tenant does not remain liable under the original tenancy agreement.*

However, based on the testimony of the parties, the evidence provided, specifically the lack of an assignment agreement or any type of document containing the names of the assignor and assignees, or containing terms reflecting the transfer of rights and obligations, and on a balance of probabilities, I find it more likely than not that the parties did not share an effective assignment agreement, and I further find that the Tenant did not successfully assign their tenancy agreement.

Given the two findings above, I find it more likely than not that the tenancy ended on October 31, 2024, by the Tenant's abandonment as described in section 44(1)(d) of the Act, specifically when the Tenant vacated the rental unit.

As the parties were under a fixed term tenancy agreement, I find that the Tenant breached the fixed term tenancy agreement. I accept the Landlord's testimony that they incurred a financial loss when they were required to hire a realtor to find a new tenant for the rental unit, and I accept the Landlord's testimony and claims of their actions to find a new tenant as signs that they acted reasonably to minimize their loss.

Policy Guideline #16 provides guidance on nominal damages, and it states:

*Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

In these circumstances, and with mind to the wording contained in the liquidated damages policy guideline regarding the upper limit that can be claimed for damages it was intended to cover, under section 67 and 72 of the Act, I find that the Landlord is entitled to a monetary award for nominal damages in the amount of \$750.00, for the Tenant's breach of the fixed term tenancy agreement due to abandonment of the rental unit.

**Is the Landlord authorized to retain all or a portion of the Tenant's security deposit? Or is the Tenant entitled to a monetary order for the return of all or a portion of their security deposit?**

Section 38(1) of the Act states that within 15 days after the later of, the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must return the security deposit with interest calculated in accordance with the Regulation or make an application for dispute resolution claiming against the security deposit.

While the Tenant claimed for double the return of the security deposit, I reason that given the above that the tenancy ended on October 31, 2024, the forwarding address was received on November 10, 2024, the Landlord's application was filed on November 11, 2024, I find that the Landlord complied with section 38(1) of the Act by filing their application within the required time.

As the Landlord's application is strictly for liquidated damages and not associated with any claims for physical damage to the rental property, I find that the extinguishment provisions and the doubling provisions provided in the Act are not applicable here.

Given the above monetary award granted to the Landlord, under section 38 and section 72 of the Act, I authorize the Landlord to retain \$750.00 of the Tenant's security deposit to satisfy the abovementioned monetary award for nominal damages.

Regarding the remaining portion of the Tenant's security deposit, with a calculated value of \$250.00, under section 62 and 72 of the Act, I order the Landlord to return the

remaining portion of the security deposit plus accumulated interest on the entire deposit in the sum of \$23.20. Combined, the total value to be returned to the Tenant is \$273.20.

The accumulated interest was calculated in accordance with the Residential Tenancy Regulation with the assistance of the publicly available Deposit Interest Calculator. The references dates used are the beginning of this tenancy, the date of this decision, and the value of the original deposit.

Based on the above, under section 72 of the Act, I find that the Tenant is entitled to a Monetary Order in the amount of \$273.20, for the return of a portion of the security deposit plus interest.

**Is the Landlord entitled to recover the filing fee for their application? Is the Tenant entitled to recover the filing fee for their application?**

As the parties were both successful in their applications, I find that both the Landlord and the Tenant are entitled to recover the filing fee for their respective applications. Policy Guideline #17 allows the director and their delegates to set off awarded amounts against each other to obtain one final award.

As the filing fees are \$100.00 for each application respectively, and both parties are entitled to recover the filing fees, I set off the amounts awarded to each party for the filing fee against each other, and the amounts awarded create a net zero amount. Consequently, I decline to make any monetary orders.

**Conclusion**

The Landlord is authorized to retain a portion of the Tenant's security deposit.

I order the Landlord to return the remainder of the Tenant's security deposit, plus accumulated interest forthwith.

I grant the Tenant a Monetary Order in the amount of \$273.20, for the remainder of the security deposit plus interest.

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00.

I grant both parties their requests for the return of the filing fee, the amounts awarded are offset against each other and consequently no monetary order is issued.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 24, 2025

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Residential Tenancy Branch