



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution dated May 10, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement
- an order permitting the Landlord to retain all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by B.B., who provided his solemn affirmation. The Tenant did not attend the hearing.

The Landlord provided documentary evidence confirming service of the Landlord's Application package, including documentary evidence, by registered mail on May 5, 2016. Pursuant to section 90 of the *Act*, documents served in this manner are deemed to be received five days later. Accordingly, I find the Tenant is deemed to have received the Landlord's Application package, including documentary evidence, on May 10, 2016.

The Landlord's agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order permitting the Landlord to retain all or part of the security and pet damage deposits?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. The tenancy agreement confirms a fixed-term tenancy began on November 1, 2015, and was to continue to until October 31, 2016. Pursuant to a Rental Incentive Agreement, signed and dated October 9, 2016, rent was reduced in exchange for the Tenant's commitment. The Rental Incentive Agreement states:

Upon signing a 12 month lease agreement the tenant(s) will receive a monthly rental concession in the amount of \$35 for the term of the lease.

[Reproduced as written.]

Accordingly, rent was established at \$865.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$50.00.

On behalf of the Landlord, B.B. provided oral testimony in support of the amounts claimed. First, he confirmed the Landlord sought to be compensated \$45.00 for cleaning and repair costs. This amount consists of \$20.00 to shampoo the carpet and \$25.00 to paint a portion of the hall or entrance in the rental unit. In support, the Landlord provided a Condition Inspection Report and a Move In/Move Out/Charge Analysis form.

Second, B.B. provided oral testimony concerning a liquidated damages clause found at paragraph 4 of the tenancy agreement, which states:

RENTAL PERIOD & TERMS OF TENANCY. The tenancy created by this agreement COMMENCES ON NOVEMBER 1, 2015 And continues on...NOT LESS THAN 12 MONTHS...basis until cancelled in accordance with the Act. However, if the Tenant terminates the tenancy in less than

*12 months, **\$350 + RENT CONCESSIONS** will be charged by the Landlord and the Tenant will pay this amount as a service charge for tenancy change over costs, such as advertising interviewing, administration, re-renting, for this short-term tenancy. This is not a penalty.*

[Reproduced as written.]

Third, B.B. submitted the Landlord is entitled to be compensated \$210.00 as reimbursement for rent concessions given to the Tenant for the six months from November 1, 2015 to April 30, 2016, as per the Rental Incentive Agreement, which states:

If in any case the tenant breaks the lease within the specified time, any and all lease incentives agreed upon during the lease term will be immediately due and payable to [the Landlord].

[Reproduced as written.]

Finally, the Landlord has requested recovery of the \$100.00 filing fee, and wishes to apply the security deposit held to any monetary award granted.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

The Landlord alleged the Tenant breached a fixed-term tenancy agreement. Residential Tenancy Branch Policy Guideline 30 confirms that a fixed-term tenancy exists when “the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date.” Guideline 30 goes on to state: “neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties.” I find the Landlord and Tenant were parties to a fixed-term tenancy for the period from November 1, 2015 to October 31, 2016, and that the Tenant breached the fixed-term tenancy agreement by ending the tenancy early on April 30, 2016.

The Landlord sought to recover \$45.00 for cleaning and painting charges. I find that the amount claimed is reasonable and grant the Landlord an award in that amount.

The Landlord also sought to recover \$350.00 as liquidated damages. Residential Tenancy Branch Policy Guideline 4 states:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in an 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.

...

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

I find the liquidated damages clause found in paragraph 4 of the tenancy agreement is not a penalty. The liquidated damages clause was agreed to in advance and is a reasonable amount when compared to monthly rent. Accordingly, I award the Landlord \$350.00 as recovery of liquidated damages.

The Landlord also sought to recover \$210.00 pursuant to the Rental Incentive Agreement. I find the Landlord made the rent concession in exchange for the Tenant's commitment. I find the Landlord is entitled to an award in this amount.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee.

Finally, pursuant to section 38 of the *Act*, the Landlord wishes to apply the security deposit (\$50.00) in partial satisfaction of the claim, which I allow. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$655.00, which has been calculated as follows:

Claim	Amount
Cleaning and painting costs:	\$45.00
Liquidated damages:	\$350.00
Recovery of rent incentives:	\$210.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$50.00)</i>
TOTAL:	\$655.00

Conclusion

The Landlord is granted a monetary order in the amount of \$655.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 3, 2016

Residential Tenancy Branch

