



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 **LL: MNDCL-S, FFL**
 TT: MNSD, MNDCT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the deposit for this tenancy pursuant to section 38; and
- A monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the “landlord”).

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenant confirmed receipt of the landlord’s application and evidence and based on their testimony I find they were duly served with the materials in accordance with sections 88 and 89 of the *Act*.

The tenant testified that they served the landlord with their application and evidence by registered mail sent to the address for service provided on the signed tenancy agreement on March 24, 2021. The tenant provided a valid Canada Post tracking receipt as evidence of service. The landlord testified that they have not received the tenant's materials. The landlord confirmed the mailing address used by the tenant as the address for service. The landlord expressed confusion that the corporate head office did not provide them with a copy of the tenant's application and evidence.

Based on the evidence before me, despite the landlord's testimony that they have not been provided a copy of the tenant's application and evidence, I find that the landlord is deemed to be served with the tenant's materials on March 29, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is either party entitled to the deposit for this tenancy?

Is either party entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed-term tenancy began on March 1, 2021. The monthly rent was \$1,300.00 payable on the first of each month. A security deposit of \$650.00 and key deposit of \$50.00 were paid at the start of the tenancy and are still held by the landlord.

The tenant submits that upon moving into the rental unit they found the suite infested with cockroaches and pests and they deemed the unit uninhabitable. The tenant informed the landlord of the issue and the landlord took measures to contact a third-party pest control company. The parties agree that the pest-control company took some steps fumigating the rental property to deal with the reported cockroach incursion.

The tenant submits that the measures taken by the landlord were insufficient and that the cockroaches remained an ongoing issue in the rental unit. The tenant gave written notice of their intention to end the tenancy if the situation was not resolved on March 8,

2021. The tenant subsequently issued correspondence dated March 11, 2021 to give notice to end the tenancy as they did not feel the issue was satisfactorily resolved. The tenant also provided a forwarding address in their correspondence of March 11, 2021. The tenant vacated the rental unit on March 14, 2021.

The tenant now seeks a return of their deposits, the rent paid for March 2021, and the costs of moving and storage. The tenant submitted some receipts for costs they say were incurred as a result of the landlord and some witness statements from friends reporting they observed the presence of bugs and cockroaches in the rental suite.

The landlord submits that they took reasonable steps in response to the tenant's complaints by retaining a third-party pest control company who fumigated the property. The landlord seeks an order allowing them to retain the deposit for this tenancy and damages for rental income loss for the month of April 2021. The landlord gave some testimony that they found a new occupant for the suite for May 2021.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find insufficient evidence to support the tenant's position that the rental unit was infested with pests and cockroaches to a degree that it fell below a state that complied with the health and safety standards, made it unsuitable for occupation, or at all. I find the tenant's testimony and two letters from the tenant's friends to be insufficient to establish on a balance of probabilities that there were cockroaches present in the rental suite. I note that the parties completed a move-in condition inspection when the tenancy began and they did not note any pests, cockroaches or evidence of their presence in the document. While the tenant submits that cockroaches are nocturnal and would not have been observed at the time of the inspection, if there were the number of pests the tenant reports it would be reasonable to expect some evidence of their presence in droppings or odors.

In any event I find the landlord acted reasonably when the tenant requested something be done to address the issue by retaining a third-party pest control company to perform fumigation and follow-up inspections as per industry standards.

Based on the totality of the evidence I am not satisfied that the tenant has established that there were cockroaches and pests in the rental unit or that the landlord breached the Act, regulations or tenancy agreement by failing to take appropriate steps when the tenant made their complaint. I find that the tenant has failed to meet their evidentiary burden on a balance of probabilities and consequently dismiss the tenant's application in its entirety.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the parties agree that the tenants gave notice to the landlord to end the tenancy on March 11, 2021 and vacated the rental unit on March 14, 2021. This was a fixed-term tenancy scheduled to continue until February 28, 2022. The landlord says that they incurred rental income loss as a result of the tenant's insufficient notice. The landlord submits that they were able to find a new occupant as of May 1, 2021 but suffered rental income loss for the month of April.

While I accept that the landlord incurred some losses due to the tenant's early notice in breach of section 45 of the *Act* and the tenancy agreement, I find insufficient evidence of the steps the landlord has taken to mitigate their losses.

The landlord gave vague testimony that they took steps to advertise and find a new occupant when the fumigation work was done in the rental unit. The landlord provided no documentary evidence to support their submission as to efforts taken.

Based on the evidence, while I find that the tenant breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has not demonstrated that the full amount of the loss incurred are due to the tenant rather than contributed to by the landlord's failure to take steps to mitigate their losses. The landlord submits that they were eventually able to find a new occupant to commence in May 2021. Given the reality of the rental housing market I do not find it reasonable that the landlord was not able to find a new occupant for six weeks.

I find that the landlord suffered some losses due to the early breach of the fixed term agreement but not the full amount claimed in their application. I find that a monetary award of \$650.00, half of the monthly rent is an appropriate value of the loss suffered by the landlord due to the tenant.

As the landlord was partially successful in their application I issue an order allowing them to recover \$50.00, half of their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and key deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord is granted a monetary award in the amount of \$700.00 for loss of rental income and recovery of their filing fee. The landlord is authorized to retain the \$700.00 deposit for this tenancy in full satisfaction of this order.

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: August 20, 2021

Residential Tenancy Branch