



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 25 minutes. The landlord's two agents, "landlord CF" and "landlord RL" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:55 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's two agents and I were the only people who called into this teleconference.

Landlord CF provided the names and spelling for himself and landlord RL. He confirmed the legal name of the landlord company named in this application ("landlord"). He said that he is the operation managers for the landlord and that both he and landlord RL had permission to represent the landlord at this hearing. He provided the rental unit address. He provided a mailing address for me to send this decision to the landlord after the hearing.

Landlord RL confirmed his name and said that he was the accountant for the landlord.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recording of this hearing by any party. At the outset of this hearing, landlord CF and landlord RL both separately affirmed, under oath, that they would not record this hearing.

Landlord CF was the primary speaker for the landlord at this hearing, as landlord RL did not testify at this hearing.

I explained the hearing process to landlord CF. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Landlord CF testified that the tenant was served with a copy of the landlord’s application for dispute resolution, notice of hearing, and evidence package on February 15, 2022, by way of registered mail, to the tenant’s forwarding address provided by the tenant on the move-out condition inspection report on January 31, 2022. The landlord provided a Canada Post receipt and landlord CF confirmed the tracking number verbally during this hearing. The landlord provided the move-out condition inspection report and landlord CF confirmed the tenant’s forwarding address noted on the report, verbally during this hearing. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord’s application on February 20, 2022, five days after its registered mailing, to the tenant’s forwarding address provided by the tenant on the move-out condition inspection report.

Landlord CF stated that no further evidence regarding this application, was served to the tenant after February 15, 2022.

Pursuant to section 64(3)(c) of the Act, I amend the landlord’s application to remove “main” from the rental unit address and to correct the legal name of the landlord company. Landlord CF requested and consented to these amendments during this hearing. I find no prejudice to the tenant in making the above amendments.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the Act, Regulation or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of landlord CF, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Landlord CF testified regarding the following facts. This tenancy began on June 1, 2021 and ended on January 31, 2022. Monthly rent in the amount of \$1,450.00 was payable on the first day of each month. A security deposit of \$725.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed by both parties and copies were provided for this hearing. The tenant did not sign the move-out condition inspection report because he disagreed with it. The landlord did not have written permission from the tenant to keep any part of the tenant's security deposit. The landlord's application to retain the tenant's security deposit was filed on February 4, 2022. A written forwarding address was received by the landlord from the tenant on January 31, 2022, by way of the move-out condition inspection report.

As per the landlord's online application, the landlord seeks a monetary order of \$1,670.00 plus the \$100.00 application filing fee. Landlord CF did not state a total amount for the landlord's monetary claim, during this hearing.

Landlord CF stated the following facts. The landlord had to evict the tenant because of his unsafe actions, since the tenant was throwing stuff at people on the street, and the landlord had to protect the safety of other tenants at the rental property. The landlord is seeking rent and liquidated damages, which the tenant is responsible for, because he breached his one-year lease. The landlord had to clean the rental unit. The landlord was able to re-rent the unit to new tenants, as of February 15, 2022. The landlord is seeking half a month's rent, from February 1 to 14, 2022, in the amount of \$725.00. The tenant never hooked up hydroelectricity to an account in his name. The landlord provided hydro bills totalling \$107.00, which is well over the \$50.00, that the landlord is claiming for unpaid hydro utilities from the tenant. The landlord was counting the above hydro bills during this hearing and it was \$107.00 total. Utilities are not included in the

tenant's rent. The landlord received the hydro bills after January 31, 2022, and applied for them on February 4, 2022, in this application, providing copies of the bills for this hearing. The landlord knows that it cannot increase its claim for hydro, even though there is a higher amount that the tenant owes. The tenant initialed the tenancy agreement, which states that his move-in bonus laundry card of \$100.00 will be reversed if he breaches the lease. The landlord is seeking \$500.00 in liquidated damages. The landlord is seeking \$30.00 for window cleaning, \$45.00 for suite cleaning, \$90.00 for drape cleaning, and \$110 for carpet cleaning. The landlord has not provided any invoices or receipts for these cleaning costs because it was done "in-house" by two employees, who get paid a salary for it.

Analysis

Rules, Legislation, and Burden of Proof

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that landlord CF did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. During this hearing, landlord CF failed to properly go through the landlord's claims and the documents submitted in support of the landlord's application. Landlord CF mentioned the existence of documents but did not properly review these documents in specific detail during this hearing. This hearing lasted 25 minutes, so landlord CF had ample opportunity to present the landlord's application, since the tenant did not attend

this hearing. I repeatedly asked landlord CF if he had any other information or evidence to present, during this hearing.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of landlord CF and the landlord's documentary evidence submitted for this hearing.

Rent Loss

I find that the landlord and tenant entered into a fixed term tenancy for the period from June 1, 2021 to May 31, 2022. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that a tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, he may have to pay for rental losses to the landlord. In this case, landlord CF testified that the landlord had to evict the tenant on

January 31, 2022, because he was causing safety concerns for other tenants at the rental property, by throwing stuff at people on the street. As per the tenancy agreement, the fixed term was to end on May 31, 2022. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for rent loss of \$725.00 from February 1 to 14, 2022, without leave to reapply. I find that the landlord failed to provide documentary or testimonial evidence including copies of rent advertisements, to show if or when it was advertised for re-rental, the rent amount per month, the term of length of the tenancy, how long the unit was advertised for, what details were given in the advertisement, and other such information. I find that the landlord failed to provide documentary or testimonial evidence to indicate how many inquiries were made for re-rental, how many showings were done, when any showings were done, how many applications were received, how many applications were accepted or rejected, and other such information.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit. Landlord CF claimed that the rental unit was rented to new tenants on February 15, 2022. The landlord provided a new tenancy agreement for a fixed term from February 15, 2022 to January 31, 2023, for the same rent that the tenant was paying of \$1,450.00 per month. Landlord CF did not reference or explain this document at all during this hearing. The tenant noted on page 3 of the move-out condition inspection report at the end of the tenancy, as to why he disagreed with the report: "improper mitigation (not advertising unit, increasing price of [illegible])." Landlord CF did not explain the above information at all, during this hearing.

Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. 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.

I find that the cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times. In this case, the landlord did not provide copies of any advertisements posted to re-rent the unit, nor did landlord CF provide testimony regarding same at this hearing. As noted above, the landlord did not provide documentary or testimonial evidence about how many inquiries were made for re-rental, how many showings were done, when any showings were done, how many applications were received, how many applications were accepted or rejected, and other such information. Landlord CF did not testify at this hearing, about how the \$500.00 amount for liquidated damages was a genuine pre-estimate of the loss.

Although the tenant vacated the rental unit prior to the end of his fixed term on May 31, 2022, I find that the landlord did not show how the \$500.00 claimed for liquidated damages was a genuine pre-estimate of the loss.

The tenant noted on page 3 of the move-out condition inspection report at the end of the tenancy, as to why he disagreed with the report: "liquidated damages and regular damages cannot be recouped." Landlord CF did not explain the above information at all, during this hearing.

For the above reasons, I dismiss the landlord's claim of \$500.00 for liquidated damages without leave to reapply.

Other Costs and Filing Fee

I dismiss the landlord's claims, totalling \$445.00, without leave to reapply. This includes window cleaning of \$30.00, suite cleaning of \$45.00, drape cleaning of \$90.00, carpet cleaning of \$110.00, a move-in bonus laundry card of \$100.00, a door knob key of \$20.00, and "hydro charge back estimate" of \$50.00.

The tenant noted on page 3 of the move-out condition inspection report at the end of the tenancy, as to why he disagreed with the report: "liquidated damages and regular damages cannot be recouped." Landlord CF did not explain the above information at all, during this hearing.

The landlord did not provide any invoices or receipts for window cleaning of \$30.00, suite cleaning of \$45.00, drape cleaning of \$90.00, and carpet cleaning of \$110.00. When I asked landlord CF about same during this hearing, he said that the landlord did not provide any invoices or receipts because the cleaning was done “in-house” by two employees who get paid a salary. The landlord did not provide documentary or testimonial evidence about the hourly rate of each worker, how many hours to complete the cleaning, what tasks were completed, what areas were cleaned in the rental unit, or other such information. The landlord provided an “information for vacating tenants” document, which states the landlord’s estimated charges for cleaning and missing keys, but landlord CF did not explain this document in any detail during this hearing or indicate if or when the tenant was provided with a copy of the above document by the landlord.

The landlord did not provide photographs of the condition of the rental unit at move-in or move-out, to show that cleaning was required. Landlord CF did not explain the move-in or move-out condition inspection reports in any detail during this hearing or point me to any specific pages or sections of the reports. The landlord noted “F” which represents “fair” as per the legend on the form, on pages 1 and 2, for all rooms and areas of the rental unit, on the move-out condition inspection report. The landlord did not indicate on this report, which specific areas of the rental unit required cleaning.

During this hearing, landlord CF did not explain the cost for the door knob key of \$20.00. He did not indicate if or when the tenant lost a key or failed to return it to the landlord, if or when a key was replaced, if or when the landlord paid any costs associated with the above amount, or who/where the cost was paid to, if it was paid.

In its online RTB application details, the landlord noted the following for the hydro utilities claim of \$50.00 (the landlord company name has been redacted by me for confidentiality reasons, as noted below):

The tenant never applied for his own BC Hydro account, and the usage was charged to [Landlord] Account. We have estimated the bill would be around \$50.

Proof of Money Owed - The tenant never applied for his own BC Hydro account, and we estimate the outstanding hydro bill around \$50 until Jan 31, 2022.

The landlord failed to provide sufficient evidence that the landlord paid hydro costs of \$50.00 on behalf of the tenant for the rental unit. The landlord provided copies of multiple hydro bills, some with balances paid and some with balances unpaid. Landlord

CF failed to go through these bills in any detail during this hearing, except to mention their existence. During this hearing, landlord CF was adding up the bills, claiming that the total amount was \$107.00. In its online RTB application, the landlord indicated that the estimate for the hydro bill ending on January 31, 2022, was \$50.00. However, the landlord only provided a bill for the period from December 31, 2021 to January 28, 2022, of \$17.09 total, which was unpaid. Landlord CF did not indicate if or when any costs were paid by the landlord for any hydro bills. The above bill for \$17.09 does not indicate the \$50.00 amount claimed by the landlord.

The landlord failed to provide sufficient evidence regarding the claim for the reversal of a move-in bonus laundry card of \$100.00. Landlord CF stated that the tenant initialled the tenancy agreement stating that the above bonus would be reversed if the tenant broke the lease. He did not indicate if or when the tenant was provided with a laundry card of \$100.00 or if or when the tenant failed to return that laundry card to the landlord.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenants.

Security Deposit

The landlord continues to hold the tenant's security deposit of \$725.00. Over the period of this tenancy, no interest is payable on the tenant's security deposit. Although the tenant did not apply for the return of his deposit, I am required to deal with its return if the landlord has applied to retain it, as per Residential Tenancy Policy Guideline 17.

This tenancy ended on January 31, 2022, and the tenant provided a written forwarding address to the landlord on the same date. Move-in and move-out condition inspection reports were completed by both parties for this tenancy. The tenant did not provide the landlord with written permission to keep any part of his security deposit. The landlord filed this application to keep the tenant's security deposit on February 4, 2022, which is within 15 days of January 31, 2022, the tenancy end date and the forwarding address date. Therefore, the tenant is not entitled to the return of double the value of his deposit, only the regular return.

Accordingly, I order the landlord to return the tenant's entire security deposit of \$725.00 to the tenant. The tenant is provided with a monetary order for same.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$725.00 against the landlord. 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 05, 2022

Residential Tenancy Branch