



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, FFL**

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 28, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant's representative J.C., and the Landlord's Agent A.H. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the start of the hearing, the Tenant's Representative stated that the Landlord has already been compensated for their loss through a Consumer Proposal Filing dated July 20, 2022. The Landlord's Agent confirmed that they have received one payment in the amount of \$2,496.75 towards their monetary claim of \$3,421.75. The Landlord's Agent

stated that they are seeking the remaining balance of their claim which amounts to \$925.00.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the one year fixed term tenancy started on September 1, 2021 and was meant to continue at least until August 31, 2022. The Tenant was required to pay rent in the amount of \$1,750.00 which was due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$725.00 which the Landlord continues to hold. The tenancy ended on June 30, 2022. The Landlord's Agent confirmed receipt of the Tenant's forwarding address on June 30, 2022.

The Landlord is claiming \$1,471.75 in rent arrears. During the hearing, the Landlord's Agent was given several opportunities to indicate how they came up with this amount and for what month(s) the rent arrears relates to. The Landlord's Agent was unable to provide any details in support of this claim.

The Landlord is seeking \$1,750.00 for liquidated damages. The Landlord's Agent stated that the Tenant left the rental unit dirty and damaged. Therefore, the \$1,750.00 is for compensation relating to returning the rental unit to its original condition at the start of the tenancy. The Tenant's representative stated that the liquidated damages clause does not relate to claims for cleaning and damage, therefore, the term should have no effect.

Lastly, in the Landlord's Application, the Landlord was seeking \$100.00 for cleaning. During the hearing, the Landlord's Agent stated that this claim was only meant to be for the return of the filing fee.

The Tenant's representative stated that after serving the Tenant's forwarding address to the Landlord on June 30, 2022, the Landlord has not yet returned any portion of the Tenant's security deposit. The Tenant's representative stated that the Landlord submitted their Application outside of the 15 day time limit.

Analysis

Based on the 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.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. 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 as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord is claiming \$1,471.75 for loss of rent. During the hearing the Landlord's Agent was unable to provide details in support of the loss or explain the value of the loss. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$1,750.00 for liquidated damages.

According to the Residential Policy Guideline #4; 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 this case the Landlord's Agent referred to cleaning and damages that were needed at the end of the tenancy. I find that cleaning and damages are not considered in the liquidated damages clause. I find that the Landlord has not demonstrated an entitlement to an award for liquidated damages as I find the term to constitute a penalty rather than a genuine pre estimate of the cost of re-renting the rental unit. I therefore dismiss this claim without leave to reapply.

As the Landlord was not successful with their Application, I find that they are not entitled to the return of the filing fee, and I dismiss this claiming without leave to reapply.

The Landlord continues to hold the Tenant's security deposit in the amount of \$725.00. Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I accept that the Tenant vacated the rental unit on June 30, 2022 and provided the Landlord with their forwarding address on the same day. During the hearing, the Landlord's Agent confirmed having received the Tenant's forwarding address on the last day of the tenancy on June 30, 2022. I find that the Tenant's forwarding address was sufficiently served pursuant to Section 88 of the *Act*.

As there is no evidence before me that the Landlord was entitled to retain any portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until July 15, 2022 to repay the deposit or make an application for dispute resolution. I find that the Landlord submitted their Application on July 28, 2022 which is 13 days beyond their deadline to submit an Application to retain the Tenant's deposit.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord (\$725.00 x 2 = **\$1,450.00**).

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$1,450.00**.

Conclusion

The Landlord's Application is dismissed without leave to reapply. The Landlord has breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$1,450.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: April 24, 2023

Residential Tenancy Branch