



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CASCADIA APARTMENT RENTALS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: **MNDCT**
 Landlord: **MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (Act) for:

1. An Order for compensation for a monetary loss or other money owed under section 67 of the Act.

This hearing also dealt with the Landlord's cross application under the Act for:

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under sections 38 and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit under sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

Tenant P.W. attended the hearing for the Tenant.

Building manager F.S. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged receipt of:

- the Tenant's Proceeding Package and evidence was deemed served by registered mail on March 29, 2023, and March 30, 2023, the Tenant uploaded a

Proof of Service form #RTB-55 attesting to this service. They also provided a copy of the Canada Post customer receipt containing the tracking number to confirm the March 25, 2023 service. The Landlord confirmed receipt; and,

- the Landlord's Proceeding Package and evidence was deemed served by registered mail on April 11, 2023, the Landlord provided the Canada Post customer receipt number attesting to this service. The Tenant confirmed receipt.

Pursuant to sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

Tenant:

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?

Landlord:

1. Is the Landlord entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
2. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on December 1, 2021. The fixed term was to end on November 30, 2022. The Tenant testified that the tenancy ended on July 31, 2022. Monthly rent was \$2,000.00 payable on the first day of each month. A security deposit of \$1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenant sent an email to the Landlord on July 14, 2022, that she would be vacating the suite at the end of the month. The Tenant testified that she understood when the tenancy ended earlier than the fixed term end date, that she would have to give up her

security deposit. The Tenant agreed that this money would be used to look for a new tenant for the rental unit.

The Tenant testified that when she moved in, the Landlord did not do a move-in condition inspection report of the rental unit. The Tenant stated that the walls needed repair and painting. At the end of the tenancy, the Landlord did not organize a move-out condition inspection of the rental unit.

The Tenant did not provide the Landlord with her forwarding address, but she stated the Landlord had her email address and phone number. The Landlord never contacted her.

Compensation for damages:

The Tenant discovered that her credit score had dropped significantly. When she investigated it, she discovered a collection agency had affected her credit rating. The Tenant called the collection agency, and she discovered that the Landlord had used the collection agency to get back money they thought they were owed. The collection agency provided the Tenant with the Landlord's invoice. This was the first time she saw this. The Tenant paid the invoice because she did not want it affecting her credit score.

The Tenant seeks the return of the Landlord's invoiced amount for repairs to the rental unit totalling \$789.03. The Tenant said when she moved into the rental unit, that it was very dusty and oily. The Tenant argued that she never went to dispute resolution about this alleged outstanding amount. The Tenant knows the Landlord had her email address and phone number, but she was never contacted about potential damages.

The Landlord seeks \$789.03 to pay for damages the Landlord repaired in the rental unit at the end of the tenancy.

The Landlord uploaded a two-page move-in and move-out condition inspection report. In the 'Condition In' column, all the items are ticked off as clean for each room. It is not signed by the Tenant. The Landlord testified that this was probably a mistake. The Landlord said it is possible that a move-in condition inspection was not completed. The condition inspection report stated that the Tenant is responsible for cleaning and painting – breaking the lease.

After completing the move-out condition inspection, the Landlord's head office filed for compensation collection directly with a collection agency. The building manager stated that the Landlord is aware of the legislation that governs rentals in British Columbia.

The Landlord claimed they discovered the Tenant's forwarding address because of her filed dispute resolution claim. When the Landlord knew the Tenant's forwarding address, they filed for damages left in the rental unit.

The Landlord uploaded a painting invoice totalling \$362.25, and a cleaning invoice totalling \$426.78.

Liquidated damages:

The Landlord claims \$1,000.00 in liquidated damages. Section 4 of the tenancy agreement states:

...However, if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Agreement at an end and in such event the sum of \$1,000.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other right or remedies available to the Landlord.

The Landlord stated they used the liquidated damages amount to re-rent the rental unit. It is used to get the suite ready for the next tenant. They received a short notice of the Tenant's intention to leave. The Landlord secured a new tenant for August 1, 2022, so is not short of rental income.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Compensation for damages:

Residential Tenancy Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party*

who is claiming compensation to provide evidence to establish that compensation is due." This section must be read in conjunction with section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant claims the rental unit was very dirty when she moved in. The Tenant stated that the Landlord did not conduct a move-in condition inspection at the start of the tenancy.

The Landlord in the hearing stated that the move-in condition inspection report was possibly not completed with the Tenant. I find the Landlord breached Part 3-Condition Inspections of the *Residential Tenancy Regulation* (Regulation). It is the Landlord's obligation to complete move-in and move-out condition inspections. I find that neither inspections were completed with the Tenant, and the Landlord cannot prove that the Tenant had left the rental unit damaged or unclean.

More seriously, the Landlord did not have an Arbitrator's order for compensation for damages in the rental unit at the end of the tenancy. Instead, the Landlord prepared an invoice, and directly forwarded it to a collection agency. The Tenant paid it because she did not want it affecting her credit score. I find the Landlord has already received this compensation, and appears to be wanting to receive it again through this arbitration.

I find the Landlord breached the Act by not filing for dispute resolution first to seek a section 67 order to retain some or all of the Tenant's security deposit, but also by sending their outstanding receipt for compensation directly to a collection agency against the Tenant. I find the Landlord did not prove that the Tenant left damage in the rental unit, as the Landlord had not completed move-in and move-out condition inspections.

This conduct goes against the legislative scheme for parties seeking compensation, and I must direct these actions to my manager, who may forward this to the compliance and enforcement unit.

I find the Tenant has substantiated her claim for compensation for the return of **\$789.03**, and I grant her an award for monetary compensation in this amount.

Liquidated damages:

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- (2) *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.*

I find the Tenant gave notice to end the tenancy before the end of the fixed term. Under section 45(2)(b) of the Act, the Tenant may not give notice on a date that is earlier than the end of the fixed term.

Residential Tenancy Policy Guideline #4-Liquidated Damages (PG#4) provides a statement of the policy intent of the legislation. PG#4 deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages.

Building manager F.S. said the Tenant vacated before the end of the fixed term tenancy. The Landlord uses their liquidated damages to make preparations to get the suite ready for the next tenant. The Landlord secured a new tenant for August 1, 2022, and is not missing rental income. I find the Landlord proved that the liquidated damages were not a penalty, but rather a genuine pre-estimate for this loss. I grant the Landlord the liquidated damages amount of **\$1,000.00**.

Section 72(1) of the Act states that '*The director may order payment or repayment of a fee under section 59(2)(c) ...*' of the Act; however, in this matter, I find the Landlord's

conduct so egregious in sending an unpaid invoice directly to a collection agency, that I do not grant the Landlord the return of their application filing fee.

The Tenant's monetary award is calculated as follows:

Item	Amount
Reimbursement for unproven damages to Tenant	\$789.03
Liquidated damages to Landlord	\$1,000.00
Less security deposit held by Landlord	-\$1,000.00
Total monetary award	\$789.03

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$789.03. 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 of British Columbia and enforced as an Order of that Court.

I grant \$1,000.00 compensation to the Landlord for liquidated damages. I order the Landlord may deduct their compensation payment from the Tenant's security deposit pursuant to section 72(2)(a) of the Act.

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: December 18, 2023

Residential Tenancy Branch