



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNR, FF

Introduction

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

- a monetary order for unpaid rent and for money owed or 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 in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant acknowledged receipt of the landlords' documentary evidence. The landlord advised that he did not receive the tenants' documentary evidence. The tenant was unable to provide sufficient evidence that she served the landlord with her documentary package, accordingly; I have not considered the tenants documentary evidence in making a decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on October 1, 2015 and was to be for a fixed term of one year but the tenancy ended on February 27, 2016. The tenant was obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the

tenants paid a \$475.00 security deposit. The landlord testified that the tenant broke the lease early and that the liquidated damages clause applies. The landlord testified that the tenant is responsible for carpet cleaning, drape cleaning and unpaid hydro costs.

The landlord is applying for the following:

1.	Carpet cleaning	40.00
2.	Drape cleaning	20.00
3.	Hydro	311.19
4.	Liquidated damages	475.00
5.	Filing fee	100.00
6.	Less deposit	-475.00
	Total	\$471.19

The tenant gave the following testimony. The tenant testified that she does agree with all of the landlords claims except for the liquidated damages. The tenant testified that she at the move out inspection she agreed with the cleaning and hydro costs but the landlord did not advise the tenant of the liquidated damages amount until after she had signed. The tenant testified that the tenancy agreement does not specify an amount and is very vague. The tenant testified that the landlord rented the unit for March 1 and suffered no losses and as such should not be entitled to liquidated damages.

Analysis

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 landlord's claim and my findings around each are set out below.

As the tenant has accepted responsibility for the cleaning and unpaid hydro costs, I find that the landlord is entitled to \$371.19.

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.

The landlord testified that the liquidated damages clause is an estimate of "worst case scenario" for the landlord. The landlord testified that it is a clause of the tenancy agreement and that the amount claimed is very reasonable. The tenancy agreement before me does have a liquidated damages clause but does not specify an amount. A liquidated damages clause has to be a genuine pre-estimate of costs incurred by the landlord and the tenant has to have notice of the

actual amount in order to sign and agree to a contract asking for it from the outset. I find the clause in the tenancy agreement before me to be ambiguous and unclear. In addition, the landlord did not provide sufficient evidence to delineate the costs incurred, if any. Based on all of the above I dismiss the landlords' claim for liquidated damages.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

1.	Carpet cleaning	40.00
2.	Drape cleaning	20.00
3.	Hydro	311.19
4.	Filing Fee	100.00
	Total	\$471.19

The landlord has established a claim for \$471.19. I order that the landlord retain that amount from the security deposit in full satisfaction of the claim. The landlord is to return the remaining \$3.81 to the tenant. I grant the tenant an order under section 67 for the balance due of \$3.81. This order may be filed in the Small Claims 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: April 19, 2017

Residential Tenancy Branch