



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FF MNDC MNSD

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- and a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

CL ("landlord") appeared as agent for the landlord in this hearing, and had full authority to do so. 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.

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As the tenants confirmed receipt of the landlords' dispute resolution hearing package for this application and evidence, I am satisfied that the landlords have served the tenants with this package and evidence in accordance with sections 88 and 89 of the *Act*. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for monetary loss, or money owed?

Is the landlord entitled to retain all or a portion of the tenants' security deposit and pet damage deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

This fixed term tenancy began on May 1, 2017, with monthly rent set at \$1,200.00. The landlord collected a security deposit and pet damage deposit in the amounts of \$600.00 each, which they still hold. The tenants do not dispute the fact that this was a fixed term tenancy which was to end on April 1, 2018. The tenants moved out on August 17, 2017 prior to the end of this tenancy. The landlord indicated in the hearing that they would agree to return the \$600.00 pet damage deposit to the tenants, but requested \$600.00 in compensation for the loss that they incurred due to tenants' failure to continue with this tenancy in accordance with the tenancy agreement and Act.

The landlord mitigated their losses, and was able to fill the vacancy. The suite was re-rented for September 1, 2017 for the same monthly rent. The landlord testified that the tenants were aware that the tenancy agreement includes a liquidated damage term on the written tenancy agreement which states that *"If the Tenant ends or gives notice to end the tenancy before the end of the original Term of this Lease...then the Tenant must pay the sum of \$600.00 to the Landlord as liquidated damages and not as a penalty ("Liquidated Damages"). The Liquidated Damages is an agreed pre-estimate of the Landlord's administrative costs of advertising and re-renting the Premises as a result of the Early Termination."*

The tenants admit that they did terminate the tenancy early, but testified that they would only agree to pay the landlord \$300.00 in losses as the landlord was able to re-rent the suite for the same monthly rent, and therefore did not suffer any losses.

A copy of the tenancy agreement was included in the landlord's evidence. The landlord testified that the terms were communicated clearly to all tenants, and that the liquidated damages were to cover administrative costs of re-renting the suite.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (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.

It was undisputed by both parties that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out seven months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is only claiming \$600.00 for liquidated damages as specified in the tenancy agreement.

I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent by re-renting the suite as soon as possible, as is required by section 7(2) of the *Act*. I am also satisfied that the landlord had communicated to the tenants that the landlord would be seeking \$600.00 in liquidated damages for the early end of this tenancy. Accordingly, the landlord is granted a monetary claim of \$600.00 for the tenants' failure to comply with sections 44 and 45 of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit and pet damage deposit plus applicable interest in satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I issue a Monetary Order in the amount of \$500.00 in the tenants' favour under the following terms which allows for the return of the remaining portion of the pet damage deposit which will be offset in order to allow the landlord to retain the security deposit and a portion of the pet damage deposit in satisfaction of the monetary claim for the tenants' failure to comply with sections 44 and 45 of the *Act*, plus recovery of the \$100.00 filing fee for this application.

Item	Amount
Security Deposit and Pet Damage Deposit	\$1,200.00
Liquidated Damages as set out in the Tenancy Agreement	-600.00
Filing Fee	-100.00
Total Monetary Order	\$500.00

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: April 4, 2018

Residential Tenancy Branch