



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 MNDL-S, MNDCL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authority to retain the tenants' security deposit, pursuant to section 38; and
- repayment of the filing fee pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open for 13 minutes in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's maintenance manager (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

The landlord testified that she served the tenants separate notice of dispute resolution packages by registered mail on December 20, 2017. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. I find that the tenants were deemed served with these packages on December 25, 2017, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to repayment of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted undisputed written evidence and sworn testimony that this one-year fixed term tenancy began on April 4, 2017. According to the terms of the Residential Tenancy Agreement (the "Agreement") entered into written evidence by the landlord, this tenancy was to end on April 30, 2018.

However, this tenancy ended on November 30, 2017 by way of a One Month Notice to End Tenancy for Cause (the "One Month Notice"). The tenants did not dispute the One Month Notice. Monthly rent was set at \$1,575.00, payable on the first day of each month. The landlord continues to hold the tenants' security deposit in the amount of \$787.50

The Agreement contains a liquidated damages clause which states that if the tenant is in breach of the *Act* or a material term of the Agreement that causes the landlord to end the tenancy before the end of the original term, then the tenants must pay the sum of \$787.50 to the landlord as liquidated damages.

The Agreement goes on to state that the liquidated damages sum of \$787.50 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 signed this Agreement and initialed the page of the Agreement containing the liquidated damages clause. The landlord was not able to specify how the \$787.50 liquidated damages estimate was calculated.

The landlord's original application contained a claim for a BC Hydro charge in the amount of \$293.35; however, at the hearing the landlord amended the By Hydro claim to \$91.20 as the tenants had made a partial payment towards the BC Hydro bill. The Agreement sets out that electricity is not included in rent.

The landlord's revised application for a monetary award of \$1,338.70 includes the following items

Item	Amount
Liquidated Damages Claim	\$787.50
Cleaning (two cleaners for four hours)	\$160.00
BC Hydro Bill	\$91.20
Smoking Fine	\$100.00
Garbage Removal Fine	\$100.00
Filing Fee	\$100.00
Total of Above Items	\$1,338.70

In support of the items identified in the landlord's claim for a monetary award, the landlord entered into written evidence invoices and receipts for each of the items listed in the landlord's application. The landlord also submitted into evidence several warning letters addressed to the tenants warning that smoking and littering on the premises would result in fines. The Agreement states at section 2.13 that the tenants agree to maintain the home as a "non-smoking" residence at all times. Copies of the fines that were eventually levied against the tenants were also submitted. The landlord testified that the rental building is not a strata property and the fines were levied directly on the tenants.

The landlord submitted photographic evidence and copies of the joint move-in condition inspection report of April 6, 2017, and the joint move-out condition inspection report of November 30, 2017. In the move-out report, the tenants acknowledged that the rental property needed cleaning and garbage removal.

The tenants did not provide any written evidence, nor did they attend this hearing.

Analysis

Liquidated Damages

Policy Guideline #4 states that 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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into. There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

In this case, I find that the tenants signed and fully understood the tenancy agreement and that they are liable to pay liquidated damages for causing the tenancy to end prematurely. I find that the liquidated damages clause was clearly and carefully laid out in the tenancy agreement and detailed the consequences of breaking the fixed term tenancy agreement to the parties. The tenants did not dispute the One Month Notice; therefore, as per section 49 of the *Act*, the tenants accepted that their actions ended the tenancy early contrary to the Agreement.

I find that the amount of ½ a month's rent stipulated to cover the administration costs that the landlord would have likely incurred at the time the tenancy agreement was entered into is reasonable and not extravagant or exorbitant in relation to the rent payable in this tenancy.

While the landlord was not able to specify precisely how the liquidated damage fee was calculated, there is insufficient evidence before me that the costs themselves are not genuine. In addition, I find that tenant failed to provide any evidence to show that the costs stated by the landlord were not a genuine pre-estimate of their losses or that they were a penalty. I find that the tenants are liable to pay liquidated damages in the amount of \$787.50.

Cleaning Fees

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the landlord's testimony and the tenants' written comments on the move out inspection report, I find that the rental unit required significant cleaning. The landlord submitted into evidence, cleaning receipts totaling \$160.00. I find that the tenants are responsible for these cleaning fees.

BC Hydro Bill

The Agreement stated that electricity was not included in rent. The landlord provided undisputed testimony that the tenants have an outstanding BC Hydro charge in the amount of \$91.20. In support of this statement the landlord submitted into evidence a final discontinuance notice from BC Hydro stating that the tenants owe \$91.20. I find that the tenants owe the landlord \$91.20 in outstanding BC Hydro fees.

Fines

Section 7 of the *Residential Tenancy Regulations* (the "Regulations") sets out what non-refundable fees a landlord may charge a tenant. Section 7 of the *Regulations* does not permit a landlord to charge fees or fine a tenant for improper garbage removal or smoking contrary to a tenancy agreement.

Pursuant to section 7 of the *Regulations*, the landlord is not entitled to levy fines on the tenants for improper garbage removal or smoking in a non-smoking area. I dismiss the landlord's claims for fines related to smoking and garbage removal without leave to re-apply.

As the landlord was mostly successful in her application, I find that the landlord is entitled to recover the filing fee from the tenants.

Pursuant to section 72(2) of the *Act*, I authorize the landlord to retain the tenants' security deposit of \$787.50 in partial satisfaction of this monetary claim.

Conclusion

I issue a monetary Order under the following terms, which allows the landlord to recover damages, losses and the filing fee for this application, and to retain the tenants' security deposit:

Item	Amount
Liquidated Damages Claim	\$787.50
Cleaning (two cleaners for four hours)	\$160.00
BC Hydro Bill	\$91.20
Filing Fee	\$100.00
Less security deposit	-\$787.50
Total of Above Items	\$351.20

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: June 18, 2018

Residential Tenancy Branch