



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 127 SOCIETY FOR HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On April 24, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for lost rent, seeking a Monetary Order for compensation for liquidated damages, and to apply the security deposit and pet damage deposit towards this debt, pursuant to section 67 of the *Act*. The Landlord is also seeking to recover the filing fee pursuant to section 72 of the *Act*.

The Tenant attended the hearing and L.G. and J.G. attended the hearing on behalf of the Landlord. All in attendance provided a solemn affirmation.

During the hearing I confirmed the spelling of the Tenant's name and at the Landlord's request, I amended the Application with the correct spelling. This appears on the first page of this decision.

L.G. advised that she served the Notice of Hearing package to the Tenant by registered mail on April 27, 2018, and the Tenant confirmed receipt of this package. In accordance with sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Landlord's Notice of Hearing package.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary award for unpaid rent and to apply the deposits towards this debt, pursuant to section 67 of the *Act*?
- Is the Landlord entitled to a monetary award for liquidated damages and to apply the deposits towards this debt, pursuant to section 67 of the *Act*?
- Is the Landlord entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

L.G. stated that the tenancy started on May 22, 2017 as a fixed term tenancy for a period of one year. Rent was established at \$1,500.00 per month, due on the first day of each month. A security deposit and a pet damage deposit, each in the amount of \$750.00, was paid. The Tenant confirmed these details.

The Tenant stated that there were problems with constant noise in the rental complex for the whole summer. She stated that she is on disability and she asked the Landlord if she could move to a different suite; however, she was denied this request, even when two units became available two weeks after this request. She submitted that there were problems with her sink, with the ventilation in the rental unit, with the stove, and that smoke was coming into her apartment. She testified that she had to keep her windows open and that the Landlord did not fix the stove after many requests. She stated that she developed a cough and heavy breathing, and from a health point of view, this rental unit was not safe so she found alternate accommodations. She stated that she had written letters to the building maintenance person regarding these issues; however, she did not include them as written evidence.

L.G. and the Tenant confirmed that she gave notice to end her Tenancy on November 23, 2017 and vacated the rental unit on November 30, 2017. L.G. stated that the Tenant was aware of the fixed term agreement and she worked diligently to re-rent the premises; however, she was not able to find a tenant until January 1, 2018. She explained to the Tenant the liquidated damages clause; however, the Tenant refused to discuss the issue anymore. L.G. stated that the Tenant did not provide a forwarding address in writing; however, she did call the Landlord on April 9, 2018 and left her new address on a voicemail. Both parties confirmed that move in and move out inspection reports were conducted.

The Tenant advised that she asked the Landlord if she could provide a forwarding address in another manner as she did not believe leaving a mailing address was safe. However, she did acknowledge that she called the Landlord on April 9, 2018 and left her

new address on a voicemail, and that she received the Landlord's Notice of Hearing package that was served to that address.

Analysis

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

As the Tenant did acknowledge that she called the Landlord on April 9, 2018 and left her new address on a voicemail, that she received the Landlord's Notice of Hearing package that was served to that address, and that she attended the hearing, I accept that the Tenant's forwarding address was provided to the Landlord and that the hearing could continue on this basis.

The first issue I will address is with respect to the Landlord's claim for lost rent. There is no dispute that the parties entered into a fixed term tenancy agreement from May 22, 2017 for a period of one year, yet the tenancy effectively ended when the Tenant vacated the rental unit on November 30, 2017. Sections 44 and 45 of the *Residential Tenancy Act* set out how tenancies end. It also specifies that a Tenant must give written notice to end a tenancy and that notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

While the Tenant attempted to portray a scenario where it was urgent for her well-being to end the tenancy in the manner that she did, and that it was justified, there is no provision in the *Act* which allows a Tenant to end a tenancy in this manner. As such, I am not satisfied that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. Furthermore, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to

the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. As I am satisfied that the Tenant gave the Landlord minimal notification that she was ending the tenancy and vacating the rental unit, and as I am satisfied based on the evidence before me that L.G. mitigated her loss by taking the necessary steps to re-rent the premises as quickly as possible, I am satisfied that the Tenant is responsible for December's rent, totaling \$1,500.00.

With respect to the Landlord's request for liquidated damages, I find it important to note that 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" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- 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.

Based on the evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to, and that the genuine pre-estimate of loss does not meet the tests for establishing this amount as a penalty. Furthermore, the policy guideline states that "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." In this instance, I find that ending a tenancy with such short notice would put the Landlord in a position where efforts to re-rent the premises would be considered sufficiently more than "negligible or non-existent". As such, I am satisfied that the Landlord mitigated their losses, that the Landlord suffered a loss of December rent, and that the Landlord has sufficiently established this claim. As such, I grant a Monetary Order in the amount of \$2,250.00 for rent owing for the month of December 2017 and the liquidated damages.

As the Landlord was successful in their claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

December 2017 rental loss	\$1,500.00
Liquidated damages	\$750.00
Recovery of filing fee	\$100.00
Less security deposit	-\$750.00
Less pet deposit	-\$750.00
TOTAL MONETARY AWARD	\$850.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$850.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 26, 2018

Residential Tenancy Branch