



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUDSON MEWS HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNRL-S

Introduction

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

- a monetary order 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
- an order authorizing the landlord the recovery of the filing fee for this 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 parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage 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 the recovery of the filing fee?

Background, Evidence

The landlords' testimony is as follows. The one year fixed term tenancy began on December 1, 2016 but ended early on October 31, 2017. The tenants were obligated to pay \$1480.00.00 per

month in rent in advance and at the outset of the tenancy the tenant paid a \$740.00 security deposit which the landlord still holds. Written condition inspection report was done at move in and move out. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenants damaged walls that needed repairing and full carpet, suite and blind cleaning. The landlord testified that on October 14, 2017 the tenants gave notice that they would be moving out by October 28, 2017. The landlord testified that due to the short notice and that the tenants' broke the lease; they seek the loss of revenue and liquidated damages as per the tenancy agreement.

The landlord is applying for the following:

1.	NSF FEE	\$25.00
2.	Suite Cleaning	236.25
3.	Blind Cleaning	128.94
4.	Wall Damage Repair and Paint	393.75
5.	Carpet Cleaning	115.00
6.	October rent	1.34
7.	Loss of revenue Nov 1-23, 2017	1139.40
8.	Liquidated Damages	740.00
9.	Filing Fee	100.00
10.	Less Deposit	-740.00
	Total	\$2139.68

The tenants gave the following testimony. The tenants agree and take responsibility for claims 1-6 as noted in the table above. The tenants do not agree with the loss of revenue and the liquidated damages. DM testified that the landlord should get one or the other but not both.

Analysis

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Claims 1-6 as per the above table = \$900.28

The tenants accept responsibility for these claims; accordingly, I find that the landlord is entitled to \$900.28.

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from December 1, 2016 to November 30, 2017.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, he could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on October 28, 2017, before the completion of the fixed term on November 30, 2017. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental the same day the tenant gave notice to end the tenancy. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. The landlord also advertised in the local newspaper. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks 23 days of lost rent for the period of November 1 - 23, 2017 the period during which the property could not be re-rented due to the tenant's breach. The liquidated damages clause of the tenancy agreement addendum states that the landlord is not precluded

from claiming a loss of rental income if liquidated damages are paid by the tenant. Accordingly, I find that the landlord is entitled to \$1139.40 for a loss of rent from November 1-23, 2017.

Liquidated Damages

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 this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after the tenant's breach. The cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenant's breach. The next question is whether the \$740.00 amount specified in the tenancy agreement addendum is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$740.00 are to cover administrative costs to list the rental unit online, show the rental unit to potential tenants, and collect and forward applications to the landlord for reference and credit checks. I find that this amount is a genuine pre-estimate of the loss. The tenant breached the fixed term tenancy agreement and specifically initialled beside the liquidated damages provision in the addendum, stating that he is responsible for this cost. Accordingly, I find that the landlord is entitled to \$740.00 for liquidated damages from the tenant.

The landlord is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

In summary, the landlord has been successful for the following items:

1.	NSF FEE	\$25.00
2.	Suite Cleaning	236.25

3.	Blind Cleaning	128.94
4.	Wall Damage Repair and Paint	393.75
5.	Carpet Cleaning	115.00
6.	October rent	1.34
7.	Loss of revenue Nov 1-23, 2017	1139.40
8.	Liquidated Damages	740.00
9.	Filing Fee	100.00
10.	Less Deposit	-740.00
	Total	\$2139.68

I order that the landlord retain the \$740.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2139.68. 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: June 21, 2018

Residential Tenancy Branch