



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC MNSD FF

This hearing was convened in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for compensation for loss or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to service of the application and evidence on file.

Issues

Is the landlord entitled to a monetary award for compensation for loss or damage?

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 tenancy began on May 1, 2017 with a monthly rent of \$2100.00 payable on the 1st day of each month. The tenancy was for a one year fixed term ending on April 30, 2018. The tenant paid a security deposit of \$1050.00 at the start of the tenancy which the landlord continues to hold. The tenant provided notice to the landlord and terminated the fixed term lease early on September 30, 2017. The landlord filed this application within 15 days of receiving the tenant's forwarding address in writing.

The landlord is claiming \$1050.00 in liquidated damages as the tenant ended the fixed term tenancy early. The landlord's agent submits the tenant signed the tenancy agreement and the 2 page addendum at the start of the tenancy. The landlord's agent submits that clause 11 of the addendum stipulates that liquidated damages are payable to the landlord if the tenant

terminates the tenancy before the end of the fixed term. The landlord's agent testified that the liquidated damages are to cover the administrative costs incurred to re-rent the apartment. The landlord's agent provided a copy of the management agreement with the landlord which requires the landlord to pay a placement fee of ½ months' rent for each new tenancy.

The landlord is also claiming \$111.30 for replacing the locks for the rental unit. The landlord's agent testified that this was done out of concern that the tenants ex-husband may have had keys to the rental unit.

The tenant testified that she provided the landlord with two months' notice for ending her tenancy which she claims she had to end due to safety & security concerns involving her ex-husband. The tenant argues that the landlord did not suffer any lost rent as the unit was re-rented immediately.

The tenant testified that she never cut an extra key for her ex-husband and that all keys were returned to the landlord at the end of the tenancy.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

As per section 45.1 of the Act, a tenant may be eligible to end a fixed term tenancy if the tenant is at risk of family violence or requires long-term care and the tenant has obtained a *confirmation of eligibility* statement in accordance with 45.2 of the Act.

There was no dispute that the tenancy was for a fixed term and that the tenant ended the tenancy early. There was also no dispute that the tenant did not obtain a *confirmation of eligibility* statement to end the tenancy early as required under the Act.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance to 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 a tenant breach. The landlord submitted a copy of the management agreement stipulating the placement fee of ½ months' rent for a new tenancy. I find the landlord suffered this loss and this amount is not extravagant and does not constitute a penalty.

As the tenancy agreement provided for a liquidated damages charge, the fact that the landlord suffered no loss of “rental” income is not relevant. The tenant also failed to provide any evidence that she was eligible to end a fixed term tenancy in accordance with the Act due to a risk of family violence.

I accept the landlord’s claim of **\$1050.00** in liquidated damages.

The landlord claim for costs associated to change the locks is dismissed as the tenant returned the keys and there was no evidence that additional keys were cut and not returned by the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenant for a **total monetary award of \$1150.00**.

The landlord continues to hold a security deposit in the amount of \$1050.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

The landlord is granted a monetary order for the balance of \$100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00. 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 05, 2018

Residential Tenancy Branch