



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
and [tenant name suppressed
to protect privacy]

DECISION

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

Introduction

On May 9, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for lost rent, seeking a Monetary Order for compensation for cleanup of the rental unit and to repair damages, and to apply the security 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*.

Mr. K.C. and Ms. K.C. attended the hearing as agents for the Landlord. The Tenant did not appear. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing package to the Tenant by registered mail on May 14, 2018 (the registered mail tracking number is on the first page of this decision). The registered mail tracking history indicated that the package was signed for on May 16, 2018. 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.

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 deposit towards this debt, pursuant to section 67 of the *Act*?
- Is the Landlord entitled to a monetary award for cleanup and repair of damages to the rental unit and to apply the deposit 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

The Landlord stated that the tenancy started on September 15, 2017 as a fixed term tenancy for a period of one year. Rent was established at \$2,600.00 per month, due on the first day of each month. A security deposit in the amount of \$1,300.00 was paid.

The Landlord stated that the Tenant did not pay April 2018 rent and when she was contacted via text, she advised that she needed time to move. He is seeking monetary compensation for April 2018 rent of \$2,600.00.

The Landlord submitted that the Tenant participated in a move out inspection report on April 24, 2018 and signed the report agreeing to the condition that she left the rental unit in. She also provided her forwarding address in writing on this form. The Landlord advised that the rental unit was a large six-bedroom duplex and the Tenant had a lot of kids. He submitted that the rental unit was not cleaned at the end of tenancy and the area outside the front and back of the rental unit was neglected. He advised that the inspection reports and the pictures submitted into evidence depicts the state of uncleanliness that the rental unit was left in and justifies the need for three cleaning staff to clean the premises for five hours each, totalling \$600.00. A receipt from the cleaning company was provided for this service.

The Landlord stated that the Tenant left the premises in need of many repairs, most of which were fairly minor but still required replacement of parts. He advised that the biggest issue was the hole in the wall that the Tenant left. The carpet in the rental unit also needed to be shampooed. In addition to the inspection reports outlining these deficiencies, the Landlord also provided pictures to depict the required repairs. He provided an invoice for the materials and labour costs, totalling \$393.03.

The Landlord's fourth claim was for \$625.00 for liquidated damages due to the Tenant ending the fixed term tenancy early. He stated that he re-listed the rental unit on all websites, he fielded many calls, and he listed the unit available for May 1, 2018 for the same amount of rent. It is his belief that the liquidated damages figure is equivalent to the minimal cost of his effort to advertise and re-rent the premises. He advised that he was able to secure a new tenant for May 1, 2018.

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 undisputed evidence is that the forwarding address in writing was provided on April 24, 2018 when the Tenant vacated the rental unit and as the Landlord made his Application within the 15-day frame, I am satisfied that the Landlord complied with the *Act* with respect to dealing with the deposit.

The first issues I will address are with respect to the Landlord's claim for lost rent for April 2018 and the subsequent liquidated damages claim. There is no dispute that the parties entered into a fixed term tenancy agreement from September 15, 2017 for a period of one year, yet the tenancy effectively ended when the Tenant vacated the rental unit on April 24, 2018. 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.

The undisputed evidence is that the Tenant did not give any written notice to end the tenancy and 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 Section 45 of the *Act*. As the Tenant maintained possession of the rental unit for the majority of the month, combined with the failure to provide payment for April and a notice that complied with Section 45, I find that the Landlord suffered a rental loss. As such, as a result of the Tenant's actions, I am satisfied that the Landlord has established a monetary award for April 2018 rent of **\$2,600.00**.

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 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 the Landlord mitigated his loss by taking the necessary steps to re-rent the premises as quickly as possible, I find that the Landlord has sufficiently established this claim. As such, I grant a Monetary Order in the amount of **\$625.00** for the liquidated damages.

With respect to the Landlord’s claims for cleaning charges to the premises, I am satisfied that the amount charged was sufficient based on the 2,200-square foot size of the rental unit, the documented and agreed upon condition that the rental unit was left in at the end of the tenancy, and the pictures provided illustrating how extensive the cleaning that was required. As such, I find that the Landlord has sufficiently established this claim and I grant a Monetary Order in the amount of **\$600.00** for cleaning.

With respect to the Landlord’s claims for recovery of costs associated with shampooing of the carpet, repair and replacement of damage and items, and charges for materials and labour, based on the documented and agreed upon condition that the rental unit was left in at the end of the tenancy and the pictures provided illustrating the damage to the premises, I find that the Landlord has sufficiently established this claim. As such, I grant a Monetary Order in the amount of **\$393.03** for shampooing of the carpets and repairs to damages.

As the Landlord was successful in his 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 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

April 2018 rental loss	\$2,600.00
Liquidated damages	\$625.00
Cleaning	\$600.00
Repairs	\$393.03
Recovery of filing fee	\$100.00
Less security deposit	-\$1,300.00
TOTAL MONETARY AWARD	\$3,018.03

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$3,018.03** 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: July 9, 2018

Residential Tenancy Branch