



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for damages or compensation, to retain the security deposit towards money owed and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and one of the Tenants were both present for the duration of the teleconference hearing. Both parties were affirmed to be truthful in their testimony.

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding documents, along with copies of the Landlord’s evidence sent by registered mail. The Landlord did not receive a copy of the Tenants’ evidence, which the Tenant confirmed was not sent to the Landlord.

In accordance with Rule 3.17 of the *Residential Tenancy Branch Rules of Procedure*, the Tenants’ documentary evidence will not be considered as part of this decision as the Landlord did not have a chance to review it prior to the hearing. This decision will be based on oral testimony from both parties, as well as the Landlord’s documentary evidence. Both parties were informed of this during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

The Landlord filed a claim for 'liquidated damages' in the amount of \$1,800.00, the same amount as the monthly rent. Evidence was also submitted referencing the Landlord's claim of \$1,800.00 as a 'liquidated damages' fee. However, during the hearing it became evident that the Landlord was seeking loss of rental income, not a fee related to a liquidated damages clause in the tenancy agreement.

As this seemed to be an error in definition only, I accept that the Landlord's claim is for loss of rental income, not for liquidated damages. The amount claimed is the same as the monthly rent and was explained to the Tenants as being claimed due to a loss of rental income based on a fixed term tenancy.

As such, I find that the change in definitions of this claim will not prejudice the Tenants and their understanding of the claim. Therefore, the Landlord's initial claims will stand and the decision will reference rental loss instead of liquidated damages.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damages or compensation?

Should the Landlord be allowed to retain the security deposit towards compensation owed?

Is the Landlord entitled to the recovery of the filing fee paid for this Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on December 1, 2017 and was for a fixed term of six months, set to end on May 31, 2018. Monthly rent in the amount of \$1,800.00 was due on the first of the month. A security deposit in the amount of \$900.00 and a pet damage deposit in the amount of \$900.00 were paid at the outset of the tenancy. The Landlord is still in possession of the security deposit and pet damage deposit and the Tenant did not provide permission to withhold any amount from either of these deposits.

The Landlord testified that they received an email from the Tenants on March 27, 2018 stating that they would be moving out on April 30, 2018. The Landlord advised the Tenants of their responsibility until the end of the fixed term tenancy and asked the

Tenants to sign an 'early end of tenancy' form agreeing to pay rent for the remainder of the fixed term. The Tenants did not sign this form and vacated the unit on April 30, 2018.

The Landlord provided testimony that the move-out Condition Inspection Report was completed with one of the Tenants on April 30, 2018, but the Tenant refused to sign the report. The Landlord testified that the Tenants' forwarding address was provided in writing to the Landlord on May 25, 2018, although the Tenant submitted that the forwarding address was provided at the time of the move-out inspection.

The Landlord stated that they began advertising the rental unit for rent on March 28, 2018 and were only able to find new tenants for May 21, 2018 in the amount of \$1,800.00 per month. The Landlord is claiming \$1,575.00 for loss of rental income for May 2018, for the period of May 1 to May 20, 2018, during which the unit was not occupied.

The Tenant testified that they signed the tenancy agreement for a fixed term of six months, but were told that this period could be changed if needed. The Tenant also stated that since they provided more than one month notice to end the tenancy, they should not be responsible for paying the remainder of the fixed term tenancy.

The Landlord is also claiming a \$25.00 late fee for rent in April 2018 which was paid on April 3, 2018. The account statement for the Tenants was submitted into evidence by the Landlord showing a payment of \$1,800.00 on April 3, 2018. The tenancy agreement addendum submitted into evidence states a daily fine of \$15.00 for late payment of rent.

The Tenant testified that she paid rent late in April 2018 due to a holiday that meant the bank was closed. She stated that the Landlord was aware that the rent payment for April would be late due to the holiday, and that it was paid on April 3, 2018.

The Landlord is claiming a \$75.00 move-in fee as noted on the tenancy agreement. They testified that the Tenants were notified of this fee, but the fee was never paid. The Tenant provided testimony that she was not aware of a move-in fee and that no one was present when she moved in to advise her of this fee.

The final claim for the Landlord is \$125.00 for cleaning that they stated is charged to all tenants upon vacating the rental unit. The Landlord noted that this fee is listed on the addendum to the tenancy agreement as the fee for cleaning a one-bedroom unit.

The Tenant stated that she cleaned the rental unit thoroughly at the time of moving out and therefore should not be responsible for paying a cleaning fee. She agreed that she participated in the move-out Condition Inspection Report, but did not sign it.

Although the Condition Inspection Report was not submitted in evidence, both parties stated that no damage was noted on the report.

Analysis

The Landlord has filed for a Monetary Order for loss of rental income, a late rent payment fee, cleaning costs at move-out, and a move-in fee. These claims will be outlined below.

Loss of rent: I accept the tenancy agreement submitted into evidence by the Landlord showing that the tenancy was for a fixed term of six months, set to end on May 31, 2018. Although the Tenant provided testimony that she gave more than one month notice to the Landlord, I refer to Section 45(2)(b) of the *Act* which states that a fixed term tenancy cannot be ended before the date stated in the tenancy agreement.

Section 45(3) of the *Act* allows a fixed term tenancy to be ended if a landlord has not complied with a material term of the tenancy agreement, and the issue is not corrected following written notice and reasonable time to correct. However, I do not find evidence that the tenancy was ended due to a material breach or that the Landlord was warned of such as breach.

As such, I find that the Tenants were not in compliance with the *Act* when they ended their fixed term tenancy on April 30, 2018. In accordance with Section 7(1) of the *Act*, when a party is not in compliance with the *Act*, they must compensate the other party for any resulting losses.

I also note that Section 7(2) of the *Act* states that a party must do what they can to minimize any losses that may occur. I accept the Landlord's testimony that they advertised the rental unit for rent after receiving notice from the Tenants. I also accept the Landlord's submission that they were not able to rent the unit until May 21, 2018.

Although the Landlord is claiming \$1,575.00 as the pro-rated rent for the period of May 1, 2018 to May 20, 2018, I find that the actual amount is \$1,161.00 based on calculating the daily rate of rent at \$1,800.00 per month.

As the Landlord would reasonably expect to have the rental unit occupied until May 31, 2018 based on the terms of the fixed term tenancy, and tried to re-rent it for May 1, 2018, I find that they are entitled to the recovery of \$1,161.00 in rent for the period from May 1 to May 20, 2018 in which the rental unit was vacant.

Late fee: I find that both parties were in agreement that rent for April 2018 was paid late. Although the Tenant stated that a holiday made it difficult to pay the rent on time, I find that Section 26(1) of the *Act* states that rent must be paid when it is due in accordance with the tenancy agreement.

I refer to Section 7(1)(d) of the *Residential Tenancy Regulation* which states that a \$25.00 late payment fee may be charged to a tenant, as long as the tenancy agreement provides for that fee in accordance with Section 7(2).

I look to the tenancy agreement submitted in evidence and find that the addendum outlines a fine of \$15.00 per day for late payment of rent. Therefore, I find that the term of the tenancy agreement addendum is not in compliance with the *Residential Tenancy Regulation* which allows for a fee of \$25.00, instead of a daily fine. I note that landlords are not allowed to charge fines to tenants.

Move-in fee: I refer to Section 7(1)(f) of the *Residential Tenancy Regulation* which states that a move-in or move-out fee charged by a strata corporation may be charged to the tenant. However, I do not find sufficient evidence from the Landlord to demonstrate that the \$75.00 fee was a fee charged by a strata corporation and passed along to the Tenants.

I note that in accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus of proof is on the person making the claim. As the Landlord has claimed for the move-in fee, I find that the burden is on them to prove that this fee is the responsibility of the Tenants and I do not find sufficient evidence to demonstrate this.

Therefore, I decline to award the move-in fee to the Landlord.

Cleaning fee: The Landlord has claimed \$125.00 for cleaning the rental unit upon the Tenants' moving out. The Landlord noted that this fee is outlined in the tenancy agreement addendum which states a fee of \$125.00 for cleaning a one-bedroom unit and will be held against the tenant's security deposit.

I note Section 20(e) which states that a landlord cannot require that all or part of a security deposit is kept at the end of the tenancy. The security deposit is kept in trust by

a landlord and can only be claimed against for actual damage to or costs involved in cleaning the unit, if there is evidence that the tenant has failed to comply with their obligations under Section 37 of the *Act*. Section 37 requires the tenant to leave the rental unit reasonably clean at the end of the tenancy.

Without sufficient evidence to show that \$125.00 of cleaning was required at the end of the tenancy, I cannot determine that the Tenant is responsible for the cleaning costs.

Therefore, I decline to award the cleaning fee of \$125.00.

Security deposit and pet damage deposit: The Landlord has applied to retain the security deposit and pet damage deposit towards compensation owed. I look to Section 38(1) of the *Act* which states that a landlord has 15 days from the later of the day the tenancy ended or the forwarding address was provided to file a claim against or repay the deposits.

The tenancy ended on April 30, 2018 and although the parties were not in agreement as to when the forwarding address was provided in writing, I find the latest date to be May 25, 2018.

As the Landlord filed for Dispute Resolution on May 15, 2018, I find that they applied in the time allowable under the Section 38 of the *Act*. Therefore, I determine that the Landlord may retain the security deposit and pet damage deposit towards the compensation owed pursuant to Section 38(4)(b) of the *Act*.

Filing fee: As the Landlord was partially successful in their application, I award them the recovery of the filing fee paid for this application in the amount of \$100.00, pursuant to Section 72 of the *Act*.

A Monetary Order will be issued to the Tenants for the return of the remainder of their security deposit and pet damage deposit in the amount outlined below.

Monetary Order Calculations

Security deposit	\$900.00
Pet damage deposit	\$900.00
Less May 1- May 20, 2018 rent	(\$1,161.00)
Less filing fee	(\$100.00)
Total owing to Tenants	\$539.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$539.00** for the return of the remainder of the security deposit and pet damage deposit after deductions are made for compensation to the Landlord.

The Tenants are provided with this Order and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 19, 2018

Residential Tenancy Branch