



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-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 compensation, damages and unpaid rent, as well as for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and one of the Tenants were present for the duration of the teleconference hearing. Both parties were affirmed to be truthful in their testimony and were provided the opportunity during the hearing to present testimony and evidence, as well as to ask questions of the other party.

The parties confirmed that service of the Notice of Dispute Resolution Proceeding package and evidence was completed as required.

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.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for compensation?

Is the Landlord entitled to a Monetary Order for damages?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to retain the security deposit towards compensation owed?

Is the Landlord entitled to recover the filing fee for the Application for Dispute Resolution from the Tenant?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 2017 and was for a fixed term of nine months, set to end July 31, 2018. Rent in the amount of \$1,650.00 was due on the first day of each month. A security deposit in the amount of \$825.00 was paid at the outset of the tenancy, which is still being held in trust by the Landlord.

The parties also agreed that the Tenants sent an email on April 6, 2018 which provided notice to end their tenancy on May 6, 2018. They ended up moving out on April 29, 2018, the same day that the move-out condition inspection report was completed and the Tenants' forwarding address was provided to the Landlord.

The email from the Tenants dated April 6, 2018 was submitted in evidence by the Landlord and states that they were moving out due to the "bug infestation".

The Landlord testified that they were aware of some bugs in the home and had provided insecticide spray to the Tenants, as well as removed the vine on the soffits on the home that was likely the cause of the bugs. They also stated they were told from the Tenant's father that the bug situation was not that bad, so they do not believe that the Tenants ended their tenancy due to the bugs.

The Landlord submitted that they believed the Tenants were vacating the rental unit due to being relocated for work and purchasing a home. When the Landlord received notice from the Tenants they began advertising the rental unit for rent right away. The Landlord submitted the online advertisement for the rental unit listed at \$1,650.00 per month.

The Landlord testified that as they were not able to re-rent the unit until June 1, 2018, they experienced a loss of \$1,650.00 for the month of May 2018 due to the Tenants ending their fixed term tenancy early.

The Landlord was initially claiming a loss of rent for the remainder of the fixed term tenancy, but since they were able to re-rent the unit for June 1, 2018, they amended their claim for one month of rent, instead of three.

The Landlord is also claiming a liquidated damages fee of \$1,400.00, as stated on the tenancy agreement. The tenancy agreement submitted in evidence states the following regarding the liquidated damages clause:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this agreement that causes the landlord to end the tenancy before the end of the term as set out in the lease, or any subsequent fixed term, the tenant will pay the landlord the sum of \$1,400.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent, loss of income, or for damage to the rental unit or residential property.

(Reproduced as written)

The Landlord has also claimed \$33.60 to fix a window screen that was damaged during the tenancy. The Landlord submitted the Condition Inspection Report in evidence, as well as an invoice for the repair. During the hearing, and in the evidentiary material submitted, the Tenant agreed to pay \$33.60 for the cost of repairing the window screen and confirmed that this amount may be deducted from the security deposit.

The Tenant testified that there was an issue with bugs in the rental unit during the time they resided there. She submitted that she was not aware that her father had told the Landlord that the bugs were not that bad, as that was not the case. She testified that they had to vacuum twice per day to deal with the bugs and would see them on their pillows and on the table. The bugs were mostly located in the window sills in the bedrooms, kitchen, and the trap of the sliding door. The Tenant testified that they notified the Landlord of the issue with the bugs during the tenancy by text or in person.

The Tenant testified that she did get a job in another city, but was planning on commuting for the remainder of the fixed term tenancy. However, due to the bugs, they were not willing to continue residing in the rental unit.

The Tenant provided testimony that their notice to end tenancy dated April 6, 2018 provided one month, due to ending the tenancy on May 6, 2018. She also stated that they were willing to pay for the six days in May. However, she stated that the Landlord

told them that they would not be responsible for rent in May 2018 if they vacated by the end of April, so they moved out on April 29, 2018.

Analysis

Based on the evidence and testimony of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 45(2)(b) of the *Act* which states that a fixed term tenancy cannot be ended prior to the end of tenancy date listed on the tenancy agreement. I also refer to Section 45(3) of the *Act* which allows for a tenant to end a tenancy due to a landlord's non-compliance with a material term of the tenancy agreement that has not been corrected after written notice.

However, I find insufficient evidence to establish that the Landlord was in breach of a material term of the tenancy agreement due to the concern with the bugs. The parties were not in agreement as to how much of an issue the bugs were and there was insufficient evidence to demonstrate that the bugs were a significant concern, or that the Landlord did not take steps to correct the concern when brought to their attention. I also find that the proper process for ending a tenancy for a breach of a material term was not followed due to no written notice provided with a reasonable time to correct the breach.

When the proper process for ending a fixed term tenancy in accordance with Section 45(2) is not followed, tenants are responsible for the payment of rent on the rental unit until the end of the fixed term subject only to a landlord's obligations to mitigate their losses.

As I have determined that the Tenants breached the terms of their fixed term tenancy, I find that the Landlord experienced a loss of rental income for May 2018. In accordance with Section 7(1) of the *Act*, if a loss is experienced from a party not complying with the *Act*, the party who was not in compliance must compensate the other party for that loss.

I also refer to Section 7(2) of the *Act* which states that the party claiming compensation must do what they can to minimize their losses. The Landlord submitted evidence that they advertised the unit for rent for May 2018, but were unable to secure a new tenant. As a tenancy was arranged for June 1, 2018, they were able to re-rent the unit prior to the end of the Tenants' fixed term, thus minimizing the loss that may have occurred throughout the remainder of the term.

In accordance with the above analysis, I find that the Tenant is responsible to compensate the Landlord for the loss of rent for May 2018, in the amount of \$1,650.00.

Although the Landlord brought up a \$25.00 late payment fee during the hearing, this was not outlined on the Monetary Order Worksheet submitted in evidence. As the Tenants have the right to know all of the claims against them as per the *Residential Tenancy Branch Rules of Procedure*, I determine that the late fee of \$25.00 will not be awarded.

The Landlord has also applied for compensation of the liquidated damages clause in the amount of \$1,400.00. I refer to the *Residential Tenancy Policy Guideline 4: Liquidated Damages* which states, "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."

The Landlord submitted the tenancy agreement into evidence showing the liquidated damages clause. While the Tenant testified that she was rushed while signing the tenancy agreement, the Landlord submitted that the Tenants were able to ask questions if they didn't understand and that the agreement was reviewed with them thoroughly.

As the Tenants and the Landlord signed the tenancy agreement with the liquidated damages clause as stated above, and the Landlord testified that the liquidated damages amount is the estimated cost associated with re-renting the unit, I determine that the Tenants are responsible for the liquidated damages fee.

The Tenant and Landlord were in agreement during the hearing that \$33.60 would be withheld from the security deposit to cover the cost of replacing a screen on a window.

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

As the Landlord is still in possession of the security deposit in an amount of \$825.00, I allow the Landlord to retain the security deposit in partial satisfaction of the total amount owed, pursuant to Section 38(4)(b) of the *Act*. A Monetary Order will be issued to the Landlord in the amount outlined below:

Monetary Order Calculations

May 2018 rent	\$1,650.00
Liquidated damages	\$1,400.00

Recovery of filing fee	\$100.00
Window screen repair	\$33.60
<i>Less security deposit</i>	<i>(\$825.00)</i>
Total owing to Landlord	\$2,358.60

Conclusion

The Landlord is allowed to retain the security deposit towards the total amount owing.

After the deduction of the security deposit, and pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$2,358.60** for the remainder of the amount owed for May 2018 rent, liquidated damages, window screen repair, and for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 6, 2018

Residential Tenancy Branch