



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord for a monetary order for cleaning and damages of \$721.00, as well as an order allowing her to retain the security deposit and pet deposit in partial satisfaction of a monetary award. The Landlord also requests an order for payment of the filing fee.

The Landlord appeared for the scheduled hearing. I find that the Notice of Hearing was properly served on the Tenants at their forwarding address by way of registered mail on December 28, 2017 and delivery was noted as accepted through Canada Post; evidence was submitted by the Landlord in support of her claims.

Neither Tenant appeared for this hearing, although I left the teleconference hearing connection open until 1:46 p.m. to enable the Tenants to call into this teleconference hearing scheduled 1:30 p.m. As the Landlord attended the hearing, she was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to a monetary order for cleaning and damages, pursuant to section 67 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to retain the security deposit and pet deposit in partial satisfaction of the monetary award, pursuant to section 38 of the Act?

Is the Landlord entitled to payment of the \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began March 1, 2017 and ended November 26, 2017; a copy of the one-year fixed term tenancy agreement was submitted into evidence. The monthly rent was \$1,350.00 and a security deposit of \$675.00 was paid to the Landlord. There was also a pet deposit of \$200.00 paid.

The Landlord did a Condition Inspection Report at the beginning and end of the tenancy; she states that the parties had agreed to meet November 27, 2017 for the move-out inspection, but the Tenants did not appear; a neighbor submitted a written statement as he viewed the condition on that date. A copy of that inspection report was sent to the Tenants by registered mail in December and submitted into evidence.

The Tenants provided a forwarding address in a letter to the Landlord dated December 6, 2017 by registered mail, which was sent out on December 12th; Canada Post confirmed it went out for delivery to the Landlord's address as of December 13, 2017 and the Landlord confirms she received it December 15, 2017. As she was unable to negotiate an agreement to retain any part of the deposits, she filed this Application on December 25, 2017.

The Landlord is claiming the following damages:

- Oven replacement due to cracked glass \$531.00 claimed
- Wall repair and drain repair expense \$40.00
- Credit checks and advertisements for rental unit \$100.00, as liquidated damages
- Pet damage \$50.00

In support of her claim, the Landlord submitted the following documentary evidence:

- Her attempts to order a replacement glass for the oven through an appliance repair service, only to learn that it could not be done any cheaper than a replacement oven;
- Photographs of the cracked oven glass;
- Confirmation her oven is 7 years old and that the glass would not crack from normal wear and tear, from the manufacturer;
- Handyman receipt to fill holes and unclog a sink;
- Receipts for advertising and credit checks; and
- Witness statement at move-out inspection concerning pet damage.

The Landlord provided a calculation for the oven replacement to take into account depreciation of 7 years, based on information in Policy Guidelines published by the Residential Tenancy Branch for appliances.

With respect to the charges to re-rent the rental unit, the Landlord referred to paragraph 5 of the tenancy agreement, which states that if a fixed term tenancy is terminated early by a tenant, \$100.00 in liquidated damages will be paid to cover costs of re-renting. She argued that the Tenant ended the tenancy early, warranting payment of the liquidated damages.

The Landlord explained that she has to travel between two cities to attend at the rental unit to show the suite, and there were credit checks and advertising expenses, all of which are covered by the \$100.00 damage amount.

She claims \$50.00 of the pet deposit for about two hours of additional cleaning to remove pet hair from the blinds, drawers and corners of the rooms; the witness statement confirmed that the house was generally clean but for dog hair.

The Landlord's total claim is for \$721.00, plus \$100.00 for the filing fee. She asks to retain part of the security and pet deposits in satisfaction of this claim.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

Although the Tenants did not call into the conference call by 1:46 p.m., I chose to proceed with the hearing in their absence as I am satisfied that they were properly served with sufficient notice.

Under section 37 of the Act, when a tenant vacates a rental unit, the tenant must leave it reasonably clean, and undamaged except for reasonable wear and tear; keys must be returned to the landlord.

I find that the Landlord properly conducted a move-out inspection at the date and time agreed upon between the parties and that she provided a copy of the Condition Inspection Report to the Tenants in compliance with the Act.

I further find that the Landlord filed an Application for dispute resolution within 15 days of receiving the Tenant's forwarding address, as required under section 38 of the Act.

Under section 7 of the Act, a tenant who fails to comply with the Act must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Landlord made inquiries as to the cause of the broken glass in the oven door and found that it was unlikely caused by normal wear and tear; accordingly, I find the Tenants liable for this repair. The Landlord attempted to mitigate the cost by attempting to replace only the glass, but this proved difficult to do and would have cost as much as a replacement oven. She was able to purchase a similar oven on short notice at a "Black Friday" sale for \$995.87 and properly discounted her claim to \$531.00 based on the age of her oven, which she confirmed in writing with the manufacturer using the serial number. I am satisfied that she is entitled to this repair cost of \$531.00.

The holes in the walls were due to baby gates installed by the Tenants that were left after the tenancy ended. The handyman made this repair and he also removed the pipe in the bathroom to remove a hairball that was clogging the line. I am satisfied that the Landlord has proven this expense of \$40.00 as the damage was the fault of the Tenants.

The Landlord's claim of \$50.00 to do extra cleaning to remove dog hair is reasonable and supported by the witness statement. I am awarding that cost from the pet deposit. The Tenants are normally entitled to receive the balance of \$150.00 of this pet deposit, but this can be applied to offset a monetary award to the Landlord, pursuant to section 72(2) of the Act.

With respect to the claim of \$100.00 in liquidated damages as stated in the tenancy agreement, Policy Guideline 4 of the Residential Tenancy Branch sets out the guidelines to be applied where there is a clause in an agreement for 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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- 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.*

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."

I find that the parties agreed in writing to the liquidated damages; I further find that given the evidence of the Landlord, the sum of \$100.00 is reasonable. I am awarding that amount to the Landlord. The Landlord was successful in her claim and I am also awarding \$100.00 for the filing fee. The final monetary order is calculated as follows:

Item	Amount
Oven replacement	\$531.00
Handyman repairs	40.00

Liquidated damages – re-rent charges	100.00
Cleaning from pet	50.00
Recovery of Filing Fee for this Application	100.00
	\$821.00
Credit: Security and Pet Deposits	(875.00)
Balance due to Tenants	\$54.00

The remaining balance of the deposits must be paid to the Tenants, and I am granting the Tenants an Order for the return of the balance of their deposits. This Order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this Order are attached to the Tenants' copy of this decision.

Conclusion

The Landlord is granted a monetary award in the total sum of \$821.00. The Landlord shall retain \$821.00 of the security and pet deposits in full satisfaction of this award, and shall refund the balance in the sum of \$54.00 forthwith to the Tenants.

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