



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RUTLAND SEVENTH DAY ADVENTIST CHURCH, REMAX
MANAGEMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, MNR-S, MND-S, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the landlord's submitted documentary evidence. The tenant stated that she did not serve the landlord with her documentary evidence. Neither party raised any other service issues. As such, I accept the undisputed evidence of both parties and find that the tenant was properly served with the notice of hearing package and the landlord's submitted documentary evidence as per sections 88 and 89 of the Act. The tenant failed to serve her submitted documentary evidence to the landlord and as such is excluded from consideration in this hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation, unpaid rent, authorization to retain all or part of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 15, 2017 on a fixed term tenancy ending on July 31, 2018 as per the partial submitted copy of the signed tenancy agreement dated July 7, 2017. The monthly rent was \$1,900.00 payable on the 1st day of each month. A security deposit of \$950.00 was paid on July 7, 2017.

The landlords seek a monetary claim of \$6,341.00 which consists of:

\$966.00	Damage/Repairs	\$291.00	Cleaning Costs
		\$675.00	Repairs/Replacement, 4 doors, 4 door knobs and wall damage repairs
\$625.00	Compensation, Liquidated Damages		
\$4,750.00	Unpaid/Loss of Rent, 2 ½ months (February 2018, March 2018 and April 1-15, 2018)		

The landlords claim that the tenant breached the fixed term tenancy by pre-maturely ending the tenancy by giving notice on January 22, 2018 for February 1, 2018. The tenant confirmed her notice and the dates. The landlord claims that the rental unit was vacated leaving it dirty requiring cleaning at a cost of \$291.00 as shown by the submitted invoice dated March 15, 2018. The tenant argued that most of the rental unit had been cleaned by a cleaning service and partly by herself. The tenant admitted that some of the shelving and the refrigerator required cleaning. The landlord also relies upon a photograph of the unit which shows various personal items left by the tenant in conjunction with the disputed condition inspection report for the move-out dated February 23, 2018.

The landlords seek \$675.00 in repair/replacement costs for 4 doors (damaged and requires painting), 4 door knobs (missing) and wall repair and painting. The landlord submitted a copy of the invoice by L.S. the landlord's contractor which details the billing. The landlord has submitted 7 photographs detailing the damaged doors and wall. The tenant provided affirmed testimony accepting the damage caused, but disputes the monetary amount claimed by the landlord. The tenant argued that the amount seems excessive stating that had the tenant repaired and replaced the items herself the amount would be less. The tenant provided no further evidence.

The landlords seek \$625.00 in compensation as liquidated damages as provided for in the signed tenancy agreement, section 6 Liquidated Damages which states,

If the tenant breached a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral or by conduct of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$625 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated.

In this case, both parties agreed that this clause in the tenancy agreement was made and agreed to in the signed tenancy agreement dated July 7, 2017. Both parties agreed that the tenant breached the signed fixed term tenancy by pre-maturely ending the tenancy on February 1, 2018 as opposed to the agreed July 31, 2018 date. However, the tenant disputed the amount provided for of \$625.00 as the landlord has not provided any details of any actual costs in re-renting the unit. The landlord stated that the listed amount is a standard amount listed on all tenancy agreements by the agents of the landlord and had it been by the choice of the landlord's agent, he would have selected \$950.00. The landlord's agent also stated that the landlord/owner has incurred a new tenant placement fee of \$1,900.00 charged by the landlord's agent. The landlord's agent was unable to provide any details of how any of these amounts were calculated.

The landlord further seeks \$4,750.00 for loss of rent due to the tenant pre-maturely ending the tenancy and the landlord's inability to re-rent the unit until April 15, 2018(2 ½ months at \$1,900.00 per month). The landlord stated advertising to re-rent the unit began upon being notified by the tenant on February 27, 2018. The tenant disputed the monetary amount of \$4,750.00 as excessive arguing that the landlord could not have reasonably mitigated any losses. The tenant stated that a reasonable amount would be for \$1,900.00 equal to one months' rent to allow for the landlord to re-rent the unit. The tenant stated that according to the landlord's invoice(s) for repairs and cleaning were not completed until April 6, 2018 and that the current vacancy levels would not support not being able to re-rent the unit within one month as the demand outweighs supply. Upon review, the landlord submitted 4 pages in his documentary evidence listing the premises for rent beginning February 27, 2018, on two different online advertising platforms.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the affirmed testimony of both parties and find that the landlord has established a claim for the following items:

\$100.00	Cleaning Costs
\$675.00	Repairs/Replacement, 4 doors, 4 door knobs and wall damage repairs
\$4,750.00	Loss of Rent, Compensation, 2 ½ months at \$1,900.00/month

The tenant disputed only the monetary amount of the cleaning costs disputing that cleaning was partially performed by a cleaning service and the tenant herself. On a balance of probabilities I prefer the evidence of the landlord over that of the tenant however the tenant confirmed in her direct testimony that the fridge itself was not cleaned. I also refer to the disputed condition inspection report completed by both parties which notes only "Fridge is Filthy" and the Kitchen and Living room flooring is "dirty". A review of the report shows no other notations requiring cleaning. On this basis, I find that the landlord failed to establish a claim for cleaning of the entire rental unit, but is entitled to nominal award for floor (kitchen and living room) and refrigerator cleaning of \$100.00. The tenant accepted the damage caused to the doors and wall, but disputed the monetary amount. However, the tenant provided no basis to dispute the landlord's submitted invoice for the replacement of the 4 doors, 4 door knobs and wall damage repair. As such, the landlord has provided sufficient evidence to satisfy me of the \$675.00 claim for repairs/replacement as claimed. Residential Tenancy Branch Policy Guideline #3, Claims for Rent and Damages for Loss of Rent states in part,

This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement...

In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent...

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy...

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale...

On the landlord's claim for loss of rent, I find that the landlord has provided sufficient evidence of a loss of rental income for a 2 ½ month period for \$4,750.00. Although the tenant argued that the landlord failed to mitigate any possible losses by having repairs and cleaning performed as soon as possible, the landlord provided undisputed affirmed evidence that efforts to re-rent the unit began on February 27, 2018, but was unsuccessful until April 15, 2018. This is shown from the landlord's documentary evidence submissions of two online advertising platforms.

Residential Tenancy Branch Policy Guideline #4, Liquidated Damages states in part,

This guideline deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of 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. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.

A clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not proportion to the costs the landlord would incur as a result of the late payment.

In this claim for liquidated damages, the landlord seeks a claim of \$625.00 based upon the agreed term of the signed tenancy agreement. The tenant has argued that the liquidated damages amount. The landlord stated that the amount sought was a standard amount listed on all rental agreements by his office. The landlord also provided an opinion that had it been his choice, he would have noted an amount of \$950.00. The landlord was unable to provide any details on the calculation of the liquidated damages amount. On this basis, I find that the landlord's claim for liquidated damages in this case is dismissed. The landlord was unable to provide any actual details or explain how the amount was calculated to determine the estimate for costs related in re-renting the unit. As such, I find this liquidated damages term in these circumstances unenforceable.

The landlord has established total monetary claim of \$5,525.00. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$950.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$4,675.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: October 25, 2018

Residential Tenancy Branch