



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on February 25, 2018 she forwarded the landlord's application for dispute resolution hearing package via registered mail to tenant JC. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that tenant JC has been deemed served with the application and supporting documents on March 2, 2018, the fifth day after their registered mailing.

Preliminary Issue – Naming of the Parties

On February 19, 2018, the landlord applied for dispute resolution naming two tenants as respondents. During the hearing the landlord testified that they did not serve the application or supporting evidence to tenant AK, as the landlord was not provided with her forwarding address.

I find that the opportunity to know the case against you is a fundamental aspect of the dispute resolution process. Based on the landlord's testimony, I am not satisfied that tenant AK was served with the application or supporting documents in accordance with the *Act* or Rules of Procedure. Accordingly, I amend the landlord's application listing only tenant JC as the respondent, as JC was properly served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on May 15, 2017 on a fixed term until May 31, 2018. Rent in the amount of \$2,070.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,035.00 and a pet deposit in the amount of \$1,035.00 at the start of the tenancy, which the landlord still retains in trust.

The landlord testified that the tenant ended the fixed term tenancy without notice and vacated the unit on January 31, 2018. The landlord seeks monetary compensation for February rent in lieu of adequate notice and liquidated damages.

The landlord applied for compensation in the amount of \$1,535.00, including the following;

Item	Amount
February rent	\$2,070.00
Liquidated damages	\$500.00
Security deposit	(\$1,035.00)
Total Monetary Claim	\$1,535.00

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Based on the testimony of the landlord and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on May 31, 2018. Based on the landlord's undisputed testimony, the tenant ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

The landlord claimed damages for loss of February rent. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if he vacated the rental unit prior to the end of the fixed term tenancy. Based on this I find that the landlord is entitled to recover the February loss of rent in the amount of \$2,070.00.

Because the tenant ended the tenancy contrary to the *Act*, and the parties signed an agreement that included a liquidated damage clause, the tenant may be held liable for the amount stipulated in that clause, even if the landlord did not incur this amount of actual loss or damages.

However, in order to enforce a liquidated damage clause in a tenancy agreement or addendum, it must first be determined whether the clause is valid. Specifically it must be determined whether the amount agreed to is a genuine pre-estimate of the loss at the time the contract was entered into or a whether the amount constitutes a penalty.

Pursuant to Residential Tenancy Policy Guideline #4 Liquidated Damages, I find the liquidated damage clause in the tenancy agreement does not constitute a penalty as it is not extravagant in comparison to the greatest loss that could follow a breach, it does not indicate failure to pay results in a greater amount having to be paid and it does not require a single lump sum to be paid on occurrence of several events, some trivial some serious.

Instead, I find the liquidated damage clause is a genuine pre-estimate of the loss at the time the contract was entered into, thereby making the clause valid. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of \$500.00 from the tenant.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,035.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,535.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,635.00.

Conclusion

Item	Amount
February rent	\$2,070.00
Liquidated damages	\$500.00
Security deposit	(\$1,035.00)
Filing fee	\$100.00
Total Monetary Claim	\$1,635.00

I issue a monetary order in the landlord's favour in the amount of 1,635.00 against the tenant.

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: September 20, 2018

Residential Tenancy Branch