



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: FFL, MNDL-S

### **Introduction**

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$2400 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

The Application for Dispute Resolution named other who were occupants in the rental unit and not tenants. I dismissed the claim against the occupants without liberty to re-apply.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was sufficiently served on the Tenant on August 22, 2018 as the representative of the Tenant acknowledged service. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided**

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?

c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term written contract that provided that the tenancy would start on September 1, 2015 and end on June 30, 2017. The tenant paid a security deposit of \$500 at the start to the tenancy. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable in advance on the 31<sup>st</sup> day of each month. The rent was subsequently reduced to \$950 per month.

The tenancy agreement included the following clause: "If the tenant ends the contract before it terminates then he or she is required to compensate two months rent to the landlord."

The tenant vacated the rental unit on June 11, 2018 after paying 10 days rent or the sum of \$316. The landlord re-rented the rental unit with the new tenant taking possession on July 1, 2018.

Analysis:

The landlord claimed the sum of two month rent pursuant to the clause in the tenancy agreement that tenant must pay 2 months rent if the tenant ends the tenancy early. Policy Guideline #4 includes the following:

"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.

.....

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.

I determined the provisions in the tenancy agreement requiring the Tenant to pay the equivalent of 2 months rent is a penalty and is not enforceable. It is oppressive and amounts to a claim by the landlord of close to 4x the amount of the security deposit. In this case the tenant vacated the rental unit 20 days prior to the end of tenancy date. The landlord found a new tenant who moved in on July 1, 2018 and did not suffer a loss of rent.

However, I determined the landlord is entitled to the unpaid portion of the rent for the month of June in the sum of \$634. The law provides that where parties enter into a fixed term tenancy agreement the tenant is responsible to pay the rent for the unexpired portion of the fixed term subject to the landlord's obligation to mitigate. I determined the landlord sufficiently attempted to re-rent the premises but was not able to do so for the unexpired portion of the fixed term.

The landlord claimed the sum of \$500 for to recover the cost to repair a huge dent in the sink, broken curtains, new holes in walls, and cleaning the rental unit.

Policy Guideline #16 includes the following:

#### "C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss."

I determined the landlord is entitled to \$100 of this claim. The landlord failed to provide sufficient evidence to provide the cost she incurred to pay for repairing the sink, broken curtain and holes in the walls. However, I am satisfied the tenant failed to sufficiently clean the rental unit and the landlord is entitled to recover \$100 for the cost of cleaning. I accept the landlord's evidence that she and her mother cleaned the rental unit and thus there would be no bill from a contractor.

#### Monetary Order and Cost of Filing fee

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$734 plus the \$50 filing fee (reduced to reflect the limited success of the landlord for a total of \$784.

#### Security Deposit

Section 72(2) of the Act provides as follows:

Director's orders: fees and monetary orders

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I determined that I have the authority to order that the landlord shall retain the security deposit in partial satisfaction of the monetary claim even though the landlord failed to arrange for a Condition Inspection at the end of the tenancy.

I determined the security deposit plus interest totals the sum of \$500. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$284.

#### Conclusion:

I ordered that the landlord shall retain the security deposit of \$500. I further ordered that the tenant shall pay to the landlord a further \$284.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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 final and binding on the parties.**

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: December 18, 2018

---

Residential Tenancy Branch