



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed, to keep all or part of the security deposit and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on December 1, 2017 and was to expire on November 30, 2018. Rent in the amount of \$2,450.00 was payable on the first of each month. The tenants paid a security deposit of \$1,225.00. The tenancy ended on August 31, 2018.

The landlord claims as follows:

a.	Liquidated damages	\$1,225.00
b.	Filing fee	\$ 100.00
	Total claimed	\$1,325.00

The landlord testified that clause 5 of the tenancy agreement has a liquidated damages clause that if the tenant breaches the fixed term agreement they are entitled to collect. The landlord stated this is not a penalty, but a liquidated damages clause, which is a type of penalty for breaking the lease.

The tenants testified that this is not a true liquidated damages clause, as it is equals the same amount as the security deposit. The tenants stated that even the landlord is calling it a penalty.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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

I accept the evidence of both parties that there is a liquidated damages clause in the tenancy agreement.

However, I am not satisfied by the evidence of the landlord that this was a genuine pre-estimated of a loss, such as the cost of re-renting the premises. The evidence of the landlord was that it is a liquidated damage, which is like a penalty for breaking the lease.

The landlord did not provide any testimony that this was a genuine pre-estimate of a loss. I find that this was not a pre-estimate of a loss; rather it was intended as a penalty. Therefore, I find the clause is unenforceable.

In light of the above, I dismiss the landlord's application. The landlord is not entitled to recover the cost of the file fee from the tenants.

Since I have dismissed the landlord's application, I find the landlord is not authorized to retain any portion of the security deposit. I Order the landlord to return to the tenants the full amount of the security deposit in the amount of \$1,225.00. The tenants are granted a monetary order, should the landlord fail to comply with my order.

Conclusion

The landlord's application is dismissed. The landlord must return to the tenants the full amount of the security deposit. The tenants are granted a monetary order should the landlord fail to comply with my Order.

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: January 04, 2019

Residential Tenancy Branch