



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGIAN HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL, MNDCT, MNSD, FFT

Introduction

This hearing originally convened on January 7, 2019 and in an Interim Decision dated January 7, 2019, was adjourned to this date due to time constraints. This hearing was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord's agent, the tenant and tenant's counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord's notice of dispute resolution package was personally served on tenant's counsel on December 20, 2018. I find that the tenant was served with this package on December 20, 2018 in accordance with section 89 of the *Act*.

The landlord testified that his amendment to his application for dispute resolution was served on tenant's counsel via registered mail but could not recall on what date. Tenant's counsel confirmed receipt of the landlord's amendment package but could not recall on what date. I find that the tenant's amendment package was served on the tenant in accordance with sections 88 and 89 of the *Act*.

Both parties agreed that the landlord was served with the tenant's application for dispute resolution package via process server on December 20, 2018. I find that the landlord was served with this package on December 20, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
6. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
7. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
8. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2017 and ended on September 1, 2018. This tenancy was originally a fixed term tenancy set to end on October 30, 2018. Monthly rent in the amount of \$1,575.00 was payable on the first day of each month. A security deposit of \$780.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. On August 10, 2018 the tenant was served with a One Month Notice to End Tenancy for Cause and subsequently, on August 15, 2018, the tenant signed an Early Termination Agreement (the "Agreement"). The Agreement, in part, stated the following:

- I hereby give notice that I will terminate my tenancy in the subject rental property on September 1, 2018 at noon.
- I am aware that this notice will result in my not completing the fixed term tenancy agreement between us and I understand that I am therefore responsible to pay rent up until the last day of October 2018 if the landlord is unable to rent the subject rental property before then.
- I also understand that your acceptance of this notice does not constitute a waiver of the landlord's right to claim liquidated damages from us for early termination of a fixed term tenancy agreement.

The tenant testified that she did not read the above agreement when she signed it.

Both parties agree that the tenant texted the landlord on or around September 1, 2018 and provided him with her forwarding address. The landlord filed an application with the Residential Tenancy Branch to retain the tenant's security deposit on September 1, 2018.

Both parties agreed that a move in condition inspection report was completed and signed by both parties on November 1, 2017. Both parties agreed that they originally agreed to complete the move out condition inspection report on September 1, 2018 at 12:00 p.m.

The landlord testified that at 11:00 a.m. on September 1, 2018 he went to the subject rental property to check on the tenant's cleaning progress. The landlord testified that the tenant told him that she needed more time to complete the cleaning and asked him if they could do the move out condition inspection at 1:00 p.m. to which he agreed. The landlord testified that he attended at the subject rental property at 1:00 p.m. and the tenant was still not finished cleaning. The landlord testified that he agreed to come back at 3:00 p.m. to do the move out condition inspection report.

The landlord testified that at 3:00 p.m. the tenant told him to stop bothering her and that she would call him when she was done; however, the tenant never called him. The landlord testified that he returned to the subject rental property at 6:00p.m. and the tenant had already vacated the subject rental property. The landlord testified that he completed the move out inspection report alone at that time. The move in and move out reports are one document with a row for move in condition followed by a row for move out condition (the "condition inspection report").

The tenant testified that she informed the landlord at 1:00 p.m. that she was not finished cleaning and that she required more time and that the landlord agreed to provide her with more time. The tenant testified that the landlord checked in on her at 2:30 p.m. and she was still not finished. The tenant testified that she finished cleaning at 3:45 p.m. and asked the landlord to come to the subject rental property to complete the move out section of the condition inspection report but he was not available at that time and so she left. The condition inspection report was entered into evidence.

Text messages show that the tenant informed the landlord that she was finished cleaning the subject rental property at approximately 3:36 p.m. and the landlord responded that he was not available at that time and that he waited 3.5 hours for her to complete the move out inspection that was scheduled for 12:00 p.m. The landlord told the tenant to leave the keys and the cleaning equipment he leant the tenant.

The landlord is claiming the following damages arising out of this tenancy:

Item	Amount
Paint	\$75.00
Paint labour	\$480.00
Cleaning	\$275.00
Light bulbs	\$15.00
Window covering cleaning	\$50.00
Additional occupant fee	\$500.00

September 2018 lost rent	\$400.00
Remastered lock	\$130.00
Repair of burn mark on floor	\$100.00
Liquidated damages	\$1,600.00
Filing fee	\$100.00
Total	\$3,725.00

The tenant is claiming the following damages arising out of this tenancy and the hearing process:

Item	Amount
Legal fees	\$2,212.57
Locksmith services	\$267.75
Filing fee	\$100.00
Total	\$2,580.32

Paint and Labour

The landlord testified that there were holes in the walls in the subject rental property which required repair and the entire subject rental property required re-painting. The landlord entered into evidence a paint receipt in the amount of \$111.33 showing what he usually spends on paint; however, he acknowledged that the receipt is not for paint he purchased to paint the subject rental property. The landlord testified that he used paint previously purchased in bulk and estimated that he used two gallons of paint worth \$75.00 at the subject rental property and is seeking that amount from the tenant.

The landlord testified that he is a professional painter and painted the unit himself. The landlord testified that it took him 12 hours to repair the walls and paint the subject rental property at a rate of \$40.00 per hour for a total of \$480.00. The landlord testified that the subject rental property was last painted approximately three years before the tenant moved out.

The tenant testified that the holes in the walls of the subject rental property were there when she moved in. The move in section of the condition inspection report states that the walls in the subject rental property were in satisfactory condition and no mention of holes were made. The move out section of the condition inspection report states that there are holes in the living room and the walls need painting.

September 2018's Rent

The landlord testified that he was able to find a new tenant for the subject rental property for September 1, 2018 for a monthly rent of \$1,760.00. The landlord testified that he discounted September 2018's rent by \$400.00 as the tenants had to move in around him painting and repairing the subject rental property. The landlord is seeking to recover from the tenant the \$400.00 he discounted the new tenant's rent.

Counsel for the tenant submitted that the subject rental property did not require repairs or repainting from the tenant's actions, therefore the tenant is not responsible for the rent reduction of \$400.00 provided to the new tenants. Counsel for the tenant further submitted that in the alternative, the landlord did not suffer a loss because the new tenancy agreement was for a higher amount than the tenant's tenancy agreement.

Cleaning

The landlord testified that the tenant did a poor job cleaning the subject rental property and just moved grease around. The landlord testified that the following areas were not properly cleaned: top of the fridge, oven, stove, broiler tray, kitchen cabinets, radiators, bath tub, living room floor, closet shelf, and walls in hallways. The landlord entered into evidence photographs showing same. In addition, the landlord testified that the tenant installed a bird feeder on the outside of the subject rental property and this also had to be removed and the area cleaned.

The landlord testified that an in-house cleaner completed the cleaning which took 11 hours. The landlord is seeking reimbursement at a rate of \$25.00 per hour for a total of \$275.00. The landlord entered into evidence a cleaning receipt for an unrelated cleaning job to show that the rate of \$25.00 per hour was a reasonable rate. The landlord testified that the subject rental property was cleaned to a high standard when the tenant moved in and that she was required to clean it to the same standard when she moved out. The tenant signed the move in section of the condition inspection report which stated that "Tenant agrees the condition of the site is in better than satisfactory condition, and is clean to a high standard."

The tenant testified that she spent eight hours at the subject rental property with her nephew cleaning the subject rental property and that it was clean when she left. The tenant testified that she does not believe the photographs entered into evidence were from the subject rental property because she left the subject rental property clean.

Light Bulbs

The landlord testified that three light bulbs in the subject rental property were burnt out when the tenant left. The landlord is claiming \$5.00 per bulb. The landlord testified that he purchases the bulbs in bulk and does not have a receipt for the three bulbs required. A photograph showing three un illuminated light bulbs was entered into evidence.

The tenant testified that all the light bulbs in the subject rental property were in working order when she vacated the subject rental property.

Window Covering Cleaning

The landlord testified that section 24 of the tenancy agreement states that the tenant is required to pay for the window coverings to be professionally cleaned at the end of the tenancy if they were new or professionally cleaned at the beginning of the tenancy. Section 24 of the tenancy agreement, stating same was entered into evidence. The landlord testified that the window coverings were professionally cleaned at the beginning of the tenancy. The landlord testified that the window coverings were cleaned in house and is seeking \$50.00 from the tenant for their cleaning.

The tenant testified that she did not agree to pay any amount for the cleaning of the curtains.

Additional Occupants

The landlord testified that the tenant allowed four people to stay at the subject rental property for July and August 2018, contrary to section 19 of the tenancy agreement. The landlord is seeking \$500.00 for the breach of section 19 of the tenancy agreement, pursuant to section 7 of the tenancy agreement.

Section 19 of the tenancy agreement states:

“ADDITIONAL OCCUPANTS. Only persons listed in Clause 1, 2, or 3 may occupy the rental unit or residential property. Any other person who, without the landlord’s written permission occupies or resides in the rental unit or on the residential property for more than 14 cumulative days in a calendar year will be doing so contrary to this Agreement. The tenant must apply in writing to the landlord if the tenant wishes a person not names in Clause 1, 2, or 3 to become an occupant or co-tenant. Failure to obtain the landlord’s written permission is a breach of a material term of this Agreement.”

Section 7 of the tenancy agreement states in part:

“Subject to clause 19, Addition Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1, 2, or 3 above, the rent will increase by \$500.00 per month.”

The tenant testified that her father became ill and he stayed with her while receiving medical treatment for 20 consecutive days. The tenant testified that she had other family members visit and spend a lot of time at the subject rental property, but only her father stayed overnight.

Both parties agree that the tenant initially agreed to pay the landlord \$1,000.00 for additional occupants. The landlord entered into evidence a text message from the tenant which stated: “They can not leave eight [sic] away. My dad will leave in 10 days and sister will stay until [sic] September. They are guests from Iran, long way to come. We have talked about it”.

The tenant testified that she originally agreed to pay the landlord \$1,000.00 because she thought that she had no choice. The tenant testified that after consulting with the Residential Tenancy Branch she believed that the landlord was not allowed to charge her for guests.

Tenant’s counsel submitted that in accordance with section 30 of the *Act*, the landlord is not permitted to restrict access to the residential property by a person permitted on the residential property by that tenant. Tenant’s counsel submitted that the tenant’s family were the tenant’s guests, not occupants.

Door Knob/Lock

The tenant testified that on July 15, 2018 she returned to the subject rental property and was unable to open the door with her keys. The tenant testified that she called the landlord at least two times and he did not answer. The tenant testified that she then called a lock smith and had him replace the door knob, so she could gain access to the subject rental property. The tenant entered into evidence a receipt in the amount of \$267.75 from the lock smith which stated:

- Service call opening the door
- The lock stop functioning- too old.

The tenant is seeking to recover the cost of repairing the door knob. The tenant testified that she took a picture of the receipt from the lock smith on her phone and showed the

landlord the picture of the receipt on her phone. The tenant did not provide the landlord with a copy of the receipt prior to these proceedings.

The landlord testified that the door knob was functioning properly and that it was user error which resulted in the tenant being locked out. The landlord testified that tenants in the subject rental building all have keys to their units which lock and unlock the deadbolt on their doors. The landlord testified that all of the door knobs have another independent lock which is operated by inserting your fingers into an alcove in the door knob and turning. The landlord testified that most people don't use the door knob lock as it could result in them being locked out.

The landlord testified that he has never had another tenant get locked out from improperly using the door knob lock. The landlord testified that just because the door knob was old, does not mean that it was malfunctioning. The landlord testified that the door knob was approximately 50 years old.

The landlord testified that he tried to locate the locksmith the tenant used to gain access to her unit but was unable to do so because the receipt entered into evidence does not have an address, a telephone number or a GST #. The landlord alleged that the locksmith receipt was a forgery. The tenant denied this allegation.

The landlord testified that after the tenant replaced the door knob, the lock required re-mastering so that the landlord could gain access to the subject rental property if necessary. The landlord entered into evidence a receipt for re-mastering the door lock in the amount of \$131.25, which he is seeking to recover from the tenant.

Counsel for the tenant submitted that this cost should be covered by the landlord as the door knob required replacing because it was old and stopped functioning.

Floor Burn

The landlord testified that the tenant or one of her guests/occupants, burned the floor of the subject rental property with a cigarette. The landlord entered into evidence a photograph of the floor with a circular burn mark. The landlord testified that the flooring was 50 years old, though it had been refinished periodically throughout the years though he did not know the last time the floors were refinished.

The tenant testified that the burn mark was on the floor when she moved in. The move in section of the condition inspection report states that there is a burn mark on the floor.

The landlord testified that the comment was put in the wrong section and should have been indicated in the move out section next to the move in section.

Counsel for the tenant submitted that given the age of the building and the condition of the floors, any marks on the floors resulted from reasonable wear and tear.

Liquidated Damages

The landlord testified that the tenant breached the tenancy agreement by moving out of the subject rental property prior to the end of the fixed term. The landlord testified that he is seeking to enforce section six of the tenancy agreement which states:

If the tenant breaches 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 \$1,600.00 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.

I asked the landlord how the sum of \$1,600.00 was calculated and the landlord testified that the sum was taken from the contract.

Tenant's counsel submitted that liquidated damages must be a genuine pre-estimate of damages and that the landlord failed to prove that the sum of \$1,600.00 was a genuine pre-estimate of damages. Tenant's counsel submitted that the landlord's claim for \$1,600.00, which is higher than the tenant's rent, is oppressive and constitutes a penalty, not a pre-estimate of damages.

The landlord testified that the tenant's rent was originally going to be \$1,600.00 per month and that he just forgot to change the liquidated damages section from \$1,600.00 to the tenant's rental rate of \$1,575.00.

Legal Fees

The tenant is seeking to recover legal fees associated with preparing for and attending this hearing in the amount of \$2,212.57. Receipts evidencing same were entered into evidence.

Analysis

Condition Inspection Report

Section 35(1) of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit:

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.

Section 35(5) of the *Act* states that the landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Section 36(1) of the *Act* states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if:

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

I find that the parties agreed to complete the move in inspection report at 12:00 p.m. on September 1, 2018 in accordance with section 35(1) of the *Act*. I find that the landlord provided multiple opportunities for the tenant to complete the move out condition inspection report between 12:00 p.m. and 3:00 p.m. I find that the tenant did not participate in completing the move out inspection report at the agreed upon time, that being 12:00 p.m. on September 1, 2018 or the other times offered by the landlord. I find that the landlord, pursuant to section 35(5) of the *Act*, was authorized to complete the move out inspection and inspection report without the tenant. I find that pursuant to section 36(1) of the *Act*, the tenant is not entitled to the return of her security deposit.

Paint and Labour

The landlord entered into evidence photographic evidence showing the cleanliness of the subject rental property and the condition of the paint job. The tenant alleged that the photographs were of a different rental property and not the subject rental property.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the

burden on a balance of probabilities and the claim fails. I find that the tenant has not met the burden of proof required to prove that the photographs were of a different unit. I therefore accept the landlord's testimony that the photographs are of the subject rental property. I also find that the tenant has not met the required burden of proof to show when the subject rental property was last painted. I accept the landlord's testimony that it was painted approximately three years prior to the tenant vacating the subject rental property.

Based on the condition inspection reports, the photographic evidence and the landlord's testimony I find that the subject rental property required painting and some of the walls required repair at the end of the tenancy. While the landlord did not furnish a receipt for the paint used to paint the subject rental property, I accept his testimony that he used approximately \$75.00 worth of paint to paint the subject rental property and I find that the labour charge in the amount of \$480.00 is reasonable.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 12 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 36 months, the tenant is required to pay according to the following calculations:

$\$555.00 \text{ (cost of paint and labour)} / 48 \text{ months (useful life of paint)} = \11.56
(monthly cost)

$\$11.56 \text{ (monthly cost)} * 12 \text{ months (expected useful life of paint after tenant moved out)} = \138.72

September 2018's Rent

Residential Policy Guideline #3 states that if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent.

Residential Policy Guideline #3 also states that in a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

I find that the landlord was unable to rent the subject rental property immediately after the tenant vacated the subject rental property because of the wall repairs and painting that the subject rental property required.

Had the tenant completed the fixed term tenancy, the landlord would have received a total of \$3,150.00 in rent for September and October 2018. In reality, the landlord received \$1,360.00 for September 2018's rent and \$1,760.00 for October 2018's rent for a total of \$3,120.00. In this case, the landlord received \$30.00 less for September and October 2018's rent than he would have if the tenant stayed until the end of the fixed term tenancy. I therefore find that the landlord is only entitled to \$30.00 for loss of rent.

Cleaning and Window Covering Cleaning

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the landlord's testimony and the move out inspection report, I find that the rental unit required significant cleaning. I accept the landlord's testimony that the subject rental property required 11 hours of cleaning and I find that a rate of \$25.00 per hour, for a total of \$275.00 is reasonable. I find that the tenant is responsible for these cleaning fees.

Based on section 24 of the tenancy agreement and section 37 of the *Act*, I find that the tenant was required to have the window coverings professionally cleaned at the end of her tenancy and that she did not do so. I find the \$50.00 charge from the landlord to be reasonable and that the tenant is responsible for this fee.

Light Bulbs

Policy Guideline #1 states that the tenant is responsible for replacing light bulbs in his or her premises during the tenancy. I accept the landlord's evidence that three light bulbs were burnt out when the tenant vacated the subject rental property. I find that a charge of \$5.00 per bulb for three bulbs for a total of \$15.00 is reasonable and that the tenant is responsible for these charges.

Additional Occupants

Section 30 of the *Act* states that a landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Section 5 of the *Act* states that landlords and tenants may not avoid or contract out of this *Act* or the regulations.

I find that the family member(s) staying with the tenant were not additional occupants but guests. I find that while section 19 of the tenancy agreement states that people staying more than 14 cumulative days in a calendar year are in breach of this agreement, I find that section 19 of the tenancy agreement breaches section 5 of the *Act* by attempting to contract out of section 30 of the *Act*.

I find that the tenant does not have to pay an additional occupant fee to the landlord.

Door Knob/Lock

The tenant entered a receipt from a locksmith totaling \$267.75. The landlord alleged that the receipt was fraudulent.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has not met the burden of proof required to prove that the receipt was fraudulent. I therefore accept the tenant's testimony that the receipt is valid.

Based on the tenant's testimony and the receipt from the locksmith, I find that the door knob/lock was defective and required repair due to its age which the landlord testified was approximately 50 years. I find that the landlord is required to reimburse the tenant for the cost of the locksmith in the amount of \$267.75. As the door knob/lock required repair due to its age, I find that the tenant is not responsible for the cost of remastering the lock in the amount of \$130.00

Floor Burn

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it.

Based on the move in condition inspection report, I find that the burn mark on the floor was present when the tenant moved in. I therefore find that the landlord is not entitled to recover costs for repairing it.

Liquidated Damages

Policy Guideline #4 states that 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.

I find that the sum stated as liquidated damages in the tenancy agreement is extravagant in comparison to the greatest loss that could follow a breach. The liquidated damages fee was set higher than one month's rent. I find that this fee is oppressive and out of step with the actual costs of re-renting the unit. I also find that the sum stated as liquidated damages is not a genuine pre-estimate of damages as the landlord was not able to provide me with any information on how the sum was calculated, other than that it was stated in the contract. Based on the above, I find that the liquidated damages

clause in the tenancy agreement is a penalty clause and is therefore of no force or effect.

Legal Fees

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the tenants claim for reimbursement of legal fees.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

As both parties were partially successful in their applications, I find that each party will bear their own application fees, in accordance with section 72 of the *Act*.

I calculate the damages owed by the tenant to the landlord as follows:

Item	Amount
Paint and labour	\$138.72
September 2018's rent	\$30.00
Cleaning	\$275.00

Window covering cleaning	\$50.00
Light bulbs	\$15.00
Subtotal	\$508.72
Less door knob/lock	-267.75
TOTAL	\$240.97

While the landlord has a successful claim for \$240.97 of the tenant's security deposit, I find that pursuant to section 36(1) of the Act, the landlord is entitled to retain the tenant's entire security deposit in the amount of \$780.00.

Conclusion

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$780.00

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: February 28, 2019

Residential Tenancy Branch