



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNRL

Introduction

This hearing was convened in response to applications by the corporate landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a return of the filing fee pursuant to section 72 of the *Act*; and
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*.

Only the landlord’s agent, J.R. (the “landlord”) attended by way of conference call which lasted approximately ten minutes. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

The landlord gave undisputed testimony that a copy of the Application for Dispute Resolution hearing package, as well as the evidentiary package were sent to the tenant by way of Canada Post Registered Mail on December 6, 2018. A copy of the Canada Post tracking number was provided to the hearing by the landlord in her testimony. A review of the landlord’s evidence contained a copy of the Canada Post Registered Mail receipt. This receipt notes the documents were in fact sent on December 10, 2018. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant is deemed served with the dispute resolution hearing and evidentiary package on December 15, 2018, five days after their posting.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

A review of the tenancy agreement submitted into evidence by the landlord showed this tenancy began on November 1, 2018. The landlord said the tenant vacated the property unexpectedly in mid-November 2018. Rent was \$1,587.00 per month, and a security deposit of \$793.50 paid at the outset of the tenancy continues to be held by the landlord.

The landlord sought a monetary award of \$1,811.50 for unpaid December 2018 rent, along with drapery cleaning of \$124.80 and an early departure charge of \$100.00. The landlord explained the tenant had failed to provide the landlord with sufficient notice of their departure and had therefore caused the landlord to suffer a loss of rent for December 2018. A review of the tenancy agreement provided by the landlord shows the tenant agreed to pay a \$100.00 liquidated damages fee if the residency is terminated before the expiration of 5 months from the occupancy date. While section (v) of the 'Cost Recovery Schedule' notes, "This fee [\$100.00] is not intended as a penalty, but to recover the costs that would otherwise be amortised by the Company over the length of the residency, and is often called "liquidated damages", for the professional cleaning of the carpets and window coverings at the end of the residency."

Analysis

The landlord has applied for a monetary award of \$1,811.500 representing unpaid rent for December 2018, drapery cleaning and an early departure charge.

Section 7(1) of the *Act* notes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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. While Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

I find the tenant failed to provide the landlord with adequate notice of their intention to vacate the property for December 2018. I find the tenant has violated section 45 of the *Act* and that the landlord suffered a resulting loss from this. The landlord is therefore entitled to a monetary award representing unpaid rent for December 2018.

In addition to the above sought award, the landlord has applied to recover the costs associated with cleaning drapes and to enforce the \$100.00 liquidated damages fee.

Residential Tenancy Policy Guideline #4 examines the issue of liquidated damages and notes, "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...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." This *Guideline* notes that a liquidated damages clause will be found to be valid if; the sum demanded is not 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, or if a single lump sum is to be paid on occurrence of several events, some trivial some serious.

After examining the landlord's application and the events which led to a violation of sections 7 & 45 of the *Act*, I find that the landlord is entitled to a monetary award of \$100.00. This amount is *not extravagant in comparison to the greatest loss that could follow a breach*, it is not an amount over and above the monthly rent, and it is not contingent on a series of several events. The tenant violated the *Act* and therefore must pay the damages which have stemmed from such a breach.

I decline to award the landlord a return of the \$124.80 associated with drape cleaning as I note section (v) of the 'Cost Recovery Schedule' states specifically, "This fee [\$100.00] is not intended as a penalty, but to recover the costs that would otherwise be amortised by the Company over the length of the residency, and is often called "liquidated damages", for the professional cleaning of the carpets and window coverings at the end of the residency." I find awarding the \$124.80 in addition to the \$100.00 liquidated damages fee would result in the landlord recovering double costs for the same issue.

As the landlord was successful in their application, they may recover the \$100.00 filing fee. Using the offsetting provisions contained in section 72 of the *Act*, I allow the

landlord to retain the tenant's security deposit in partial satisfaction for the monetary award granted.

Conclusion

I issue a Monetary Order of \$993.50 in favour of the landlord as follows:

Item	Amount
Unpaid rent for December 2018	\$1,587.00
Liquidated Damages Fee	100.00
Less Security Deposit	(-793.50)
Return of Filing Fe	100.00
Total =	\$993.50

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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: March 29, 2019

Residential Tenancy Branch