



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNRL-S OPR**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession pursuant to section 46;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord’s property managers and agents, JB and CT, (“the landlord”) appeared at the hearing. The landlord was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants were provided.

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Hearing and Application for Dispute Resolution for this hearing.

Landlord's agent CT testified that he personally served the tenant with the landlord's notice of this hearing and evidence on April 24, 2019 at 9:15 AM at the unit; an agent of the landlord, LC, witnessed the service and submitted a confirming written statement as evidence..

Section 15 of *Residential Tenancy Policy Guideline #12 - Service Provisions* explains the requirement for proof of service, as follows, in part (emphasis added):

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

As the landlord's agent was the person who "actually served the documents" and was able to testify to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord has proven service of the Notice of Hearing and Application for Dispute Resolution on the tenant.

As such, I find that the tenant was served with the Notice of Hearing and Application for Dispute Resolution in accordance with section 89 of the *Act*.

As an order of possession was granted in a decision made by an arbitrator on May 9, 2019, reference to which appears on the first page, the landlord withdrew the landlord's claim for an order of possession. As the tenant continues to reside in the unit, the landlord withdrew the landlord's claim for cleaning fees with leave to reapply.

The landlord explained that the landlord continues to incur expenses relating to the unit, including expenses for bailiff fees; the landlord anticipated bringing an additional application for compensation and loss pursuant to section 67.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the fixed-term tenancy began on March 20, 2019, and was expected to continue to March 31, 2020. Rent in the amount of \$1,200.00 per month is due on or before the first calendar day of each month. The tenant paid a security deposit of \$600.00, which the landlord holds. The tenant has not provided the landlord with authorization to apply the security deposit to outstanding rent.

The landlord testified the tenant did not pay rent when due on April 1, 2019. Accordingly, the landlord issued a Ten-Day Notice to End Tenancy for Unpaid Rent and obtained an order of possession in a previous decision dated May 9, 2019, reference to which is made on the first page of this decision. The landlord testified the tenant also did not pay rent when due on May 1, 2019 and continues to reside in the unit. The landlord submitted a copy of a ledger in support of the landlord's claim that two months rent in the total amount of \$2,400.00 is outstanding, for which the landlord requested a monetary award.

The tenancy agreement contained a clause (section # 5) requiring the tenant to pay liquidated damages in the amount of \$800.00 if she breached a material term. The landlord claimed that the tenant failed to pay rent when due thereby breaching a material term of the agreement. The landlord testified that this amount was a reasonable estimate of the landlord's costs in renting the unit following the tenant's early

termination and requested a monetary award for the liquidated damages in the amount of \$800.00.

The landlord claimed reimbursement of the filing fee of \$100.00.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Rent outstanding – April 2019	\$1,200.00
Rent outstanding – May 2019	\$1,200.00
Liquidated damages	\$800.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$600.00)
Total Monetary Award Requested by Landlord =	\$2,700.00

Analysis

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award for outstanding rent for the months of April and May 2019 in the amount of \$2,400.00.

The landlord also claimed a monetary order in the amount of \$800.00 being the specified amount in the tenancy agreement for liquidated damages, payable by the tenant in the event the tenant breached a material term. I find the tenant breached a material term of the tenancy by failing to pay rent when rent became due for the months of April and May 2019.

In considering the landlord's application, I refer to *Residential Tenancy Policy Guideline # 4 – Liquidated Damages*. The Guideline states that such a clause is allowable providing it is not a penalty clause. That is, the clause must be a reasonable loss estimate at the time the agreement is entered into. The Guidelines states:

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.*

Considering the factors in the Guideline and the testimony of the landlord, I find the liquidated damages of \$800.00 included in the tenancy agreement to be a valid liquidated damages clause as it is a reasonable estimate of the landlord's costs on early termination of the tenancy. I accordingly award the landlord the sum of \$800.00 as payment for the liquidated damages.

Further to section 72, I grant the landlord authority to apply the security deposit of \$600.00 to the monetary award.

As the landlord was successful in this application, I grant a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

In summary, I award the landlord a monetary order in the amount of **\$2,700.00** calculated as follows:

ITEM	AMOUNT
Rent outstanding – April 2019	\$1,200.00
Rent outstanding – May 2019	\$1,200.00
Award for liquidated damages	\$800.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$600.00)
Total Monetary Award	\$2,700.00

Conclusion

I grant a monetary order in the amount of **\$2,700.00**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 26, 2019

Residential Tenancy Branch