



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?

3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee 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 the landlord's agent, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent provided the following undisputed testimony. This tenancy began on June 15, 2018 and ended on September 19, 2018 pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent. The tenancy was originally a fixed term tenancy agreement set to end on June 30, 2019. Monthly rent in the amount of \$1,550.00 was payable on the first day of each month. A security deposit of \$775.00 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.

The landlord's agent provided the following undisputed testimony. The landlord's agent and the tenant completed a joint move in condition inspection report on June 15, 2018. The landlord's agent and the tenant completed a joint move out inspection report on September 19, 2018. The move in and move out condition inspection reports were entered into evidence. In the move out condition inspection report the tenant agreed to allow the landlord to retain his entire security deposit for unpaid rent and cleaning costs and provided the landlord with his forwarding address in writing.

The landlord's agent testified that the tenant owes the following amount in unpaid rent for the following months:

- July 2018: \$800.00;
- August 2018: \$75.00;
- September 2018: \$1,350.
- **Total: \$2,225.00**

A tenant account statement was entered into evidence stating same.

The landlord's agent testified that the tenancy agreement has a liquidated damages clause in the amount of \$400.00 and is seeking that amount from the tenant for breaching the material term of payment of rent. Section 5 of the tenancy agreement 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 \$400.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.

The landlord's agent testified that after the tenancy ended the tenant returned the keys of the subject rental property but given how the tenancy ended, the landlord elected to change the locks to provide security to the next tenants. The landlord's agent entered into evidence a locksmith invoice in the amount of \$116.83 and is seeking that amount from the tenant.

Analysis

Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,550.00 on the first day of each month from July to September 2018 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$2,225.00 in unpaid rent.

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.

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. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

In this case, I find that the tenant signed and fully understood the tenancy agreement and is liable to pay liquidated damages for causing the tenancy to end prematurely. I find that the liquidated damages clause was clearly and carefully laid out in the tenancy agreement and detailed the consequences of breaking the fixed term tenancy agreement to the parties.

I find that the amount of \$400.00 stipulated to cover the administration costs that the landlord would have likely incurred at the time the tenancy agreement was entered into is reasonable and not extravagant or exorbitant in relation to the rent payable in this tenancy. I find that the tenant is liable to pay liquidated damages in the amount of \$400.00.

Locks

Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Policy Guideline #1 states that: if the tenant requests that the locks be changed at the beginning of a new tenancy, the landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the residential premises. The landlord is required to pay for any costs associated with

changing the locks in this circumstance. The landlord may refuse to change the locks if the landlord had already done so after the previous tenant vacated the rental premises.

Based on the landlord's agent's testimony I find that the tenant returned the keys to the subject rental property. I find that the tenant did not breach the *Act* in this regard and so is not responsible for the loss incurred by the landlord. Furthermore, pursuant to Policy Guideline #1, the landlord is responsible for the cost of re-keying the property so that the keys issued to previous tenant do not give access to the residential premises. I therefore dismiss the landlord's claim for the cost to change the locks.

Security Deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenant authorized the landlord to retain his entire security deposit in the move out condition inspection report. I therefore find that the landlord is entitled to retain the tenant's entire security deposit in partial satisfaction of the monetary claim against the tenant.

Filing Fee

As the landlord's application was successful, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$2,225.00
Liquidated damages	\$400.00
Filing fee	\$100.00
Less security deposit	-\$775.00
TOTAL	\$1,950.00

The landlord is provided with this 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: May 29, 2019

Residential Tenancy Branch