



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL MNDL-S

Introduction

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

- a monetary order for compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

HW ("landlord") appeared as agent for the landlord in this hearing. The tenants were represented by their counsel HS. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Counsel for the tenants confirmed receipt of the landlord's amended application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlord's amended application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on December 1, 2016. Both parties signed a new fixed-term tenancy agreement effective December 1, 2017, extending the tenancy to July 31, 2018. Monthly rent was set at \$2,748.00, payable on the first day of each month. The tenants moved out on June 30, 2018. A previous hearing was held on February 21, 2019, and the security and pet damage deposits were dealt with by the Arbitrator in the decision dated February 22, 2019. No move-out inspection was completed for this tenancy.

The landlord filed an application on February 6, 2019 requesting the following monetary compensation:

Legal Liaison Fee	\$729.75
Dispute Paper Fees (organizing and compiling evidence for hearing)	630.00
FOB purchase	75.00
Replacing Flooring Damage	500.00
Hydro Bills	28.30
Penalty for breaking lease early	2,748.00
Total Monetary Award Requested	\$4,711.05

The agent for the landlord testified that the landlord hired the services of a property manager to handle matters relating to the tenancy, including dealing with this dispute. The agent testified that as the landlord travels a lot, the landlord required these services.

The landlord is seeking the above losses associated with the tenants' failure to end this fixed-term tenancy in a manner compliant with the *Act*. The landlord testified that the floors have not yet been replaced due to the timing of the move-in for the new tenancy on July 1, 2019. The landlord's agent testified that the new laminate flooring was installed a year before the tenants had moved in, and were damaged during this tenancy. The landlord provided the move-in inspection report, photographs, as well as the estimate for the replacement.

The landlord is also seeking reimbursement of the unpaid utilities as well as the cost of purchasing a new FOB for this tenancy.

The landlord is also seeking \$2,748.00 as a penalty for the early end of this tenancy. The landlord submitted that since the tenants had ended this tenancy early, the landlord had to find a new tenant with little notice. The agent stated that the landlord is charged at least half a month's rent for locating a new tenant. The landlord's evidentiary materials include an addendum to the tenancy agreement which states the following:

“Tenant agrees that breaking the lease early will result in damages and expenses equating to no less than one month's rent that is separate from any potential damages found in the unit upon move-out inspection.”

Counsel for the tenants stated that the above claims by the landlord were the result of business decisions by the landlord, rather than losses associated with the tenants' failure to comply with the *Act*. Counsel emphasized how no move out inspection was done, and submitted that the landlord did not provide sufficient evidence to support that the tenants had damaged the rental unit.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

I find that the tenants were obligated to pay utilities as per the tenancy agreement and the *Act*. I find the landlord provided evidence to support that the tenants owe \$28.30 for unpaid utilities. Accordingly, I allow the landlord the monetary claim for \$28.30.

I am also satisfied that the landlord had incurred the cost of \$75.00 to replace one of the FOBs, and accordingly I allow the landlord's monetary claim of \$75.00 for this loss.

In regards to the landlord's claim to recover the cost of hiring an agent or legal liaison to deal with this tenancy and dispute resolution process, I find that this was a business decision made by the landlord. I am not satisfied the landlord has demonstrated that this decision was a necessary one due to the tenant's violation of the *Act*, regulation, or tenancy agreement. On this basis, I dismiss the landlord's claim for the legal liaison fee and claim for the cost of compiling and preparing the paperwork for this dispute without leave to reapply.

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that it was undisputed that the tenants did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I must now consider whether the landlord is entitled to the \$2,748.00 claimed by the landlord.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

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...

The landlord drafted the agreement calling for payment of no less than the equivalent of one month's rent in the case of a breach. The landlord referenced this amount as a "penalty" in their monetary worksheet, as well as in the hearing. The amount claimed in an agreement as liquidated damages is intended to be an estimate of the loss that may be suffered by the landlord if the tenants breach the agreement by ending the tenancy early. In this case, however, the landlord did not make a monetary claim for loss of rental income as they were able to mitigate their losses by re-renting the rental unit, but applied for a \$2,758.00 to cover the other costs associated with tenants' early termination of the rental unit. The landlord stated that this was to cover the costs of filling the vacancy.

The amount claimed for liquidated damages, as set out in the RTB Policy Guideline above, must be a legitimate estimate of the landlord's loss in the event of a breach to cover change over costs, such as advertising, interviewing, administration, re-renting of the rental unit due to the early termination of this tenancy. I find that the landlord personally referenced this amount as a "penalty" on more than one occasion. I do, however, accept that some of this amount is a genuine estimate of the cost of re-renting the property. Accordingly, I allow the landlord a portion of this claim. The agent for the landlord testified that the landlord is charged half a month's rent for re-filling the vacancy. As stated above, I find that the landlord's decision to employ the services of a property manager is a business one, and not a necessary one due to the tenants' breach or failure to comply with the Act. Although I am satisfied that the landlord had suffered some loss due to the tenant's failure to comply with the Act, I find that the evidence submitted does not sufficiently support the actual value of the loss suffered due to the tenants' actions. As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the landlord nominal

damages equivalent to half a month's rent to cover the changeover costs associated with the early termination of this tenancy.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties. The landlord submitted a monetary claim for the cost of replacing some of the laminate flooring damaged by the tenants. In support of this claim the landlord provided some photos of the rental unit and flooring, the move-in inspection report, as well as the estimate for replacing a portion of flooring. The tenants dispute that they had caused this damage during the tenancy. The landlord's agent testified that the flooring was installed about a year before this tenancy began. The move-in inspection report notes "normal wear and tear" as the condition at the beginning of the tenancy. The landlord submitted an estimate, citing the lack of time due to the quick change-over for the reason why the flooring has not yet been repaired. As stated above, the burden of proof falls on the applicant to support their loss, and that this loss was due to other party's breach of the tenancy agreement and *Act*. I find the description provided on the move-in inspection to be too vague to truly assist in ascertaining the condition of the flooring at the beginning of this tenancy. Additionally, I find that the photos provided do not adequately show that the flooring was damaged beyond normal wear and tear, and that this was due to the tenants' actions. As the tenants dispute that they had damaged the flooring beyond normal wear and tear, the burden of proof falls on the landlord to support this loss, and that it was directly due to the tenant's actions. I find that the evidence presented does not adequately support the value loss suffered by the landlord, and accordingly I dismiss the landlord's monetary claim for damage to the flooring without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

Conclusion

I issue a Monetary Order in the amount of \$1,527.30 in the landlord's favour as set out in the table below. The remainder of the landlord's monetary claim is dismissed without leave to reapply.

FOB purchase	75.00
Hydro Bills	28.30
Nominal Damages for losses associated with the early end of this tenancy	1,374.00
Recovery of Half of Filing Fee	50.00
Total Monetary Award	\$1,527.30

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: June 28, 2019

Residential Tenancy Branch