Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOQUITS PROPERTY MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S (Landlord)
FFT, MNDCT, MNSD (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed the application June 12, 2019 (the "Landlord's Application"). The Landlord sought compensation for damage to the rental unit, compensation for monetary loss or other money owed, to keep the security deposit and reimbursement for the filing fee.

The Tenant filed the application June 19, 2019 (the "Tenant's Application"). The Tenant sought compensation for monetary loss or other money owed, return of double the security deposit and reimbursement for the filing fee.

This matter came before me for a hearing September 24, 2019 and an Interim Decision was issued the same day. This decision should be read with the Interim Decision.

The Agent for the Landlord appeared at the hearing. The Tenant appeared at the hearing. The Tenant did not call a witness at the adjourned hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?
5. Is the Tenant entitled to compensation for monetary loss or other money owed?
6. Is the Tenant entitled to return of double the security deposit?
7. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Floor repair	$2,887.00
2	Replace lock	$117.60
3	Cleaning unit	$150.00
4	Move out fee	$100.00
5	Repair and paint unit	$302.40
6	Liquidated damages	$1,650.00
7	Incentive to lease unit	$450.00
8	Filing fee	$100.00
	TOTAL	**$5,757.00**

The Tenant sought the following compensation:

Item	Description	Amount
1	Portion of May rent	$605.00
2	Double security deposit	$1,650.00
3	Filing fee	$100.00
	TOTAL	**$2,355.00**

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started February 01, 2019 and was for a fixed term ending May 31, 2019. Rent was $1,650.00 per month due on the first day of each month. The Tenant paid a $825.00 security deposit. The agreement had a two page addendum which included the following terms:

> 10. Move-in/Move-out:
>
> (a) …Tenant is responsible for paying a $100.00 move in fee and $100.00 move out fee to the Landlord.
>
> 13. …if the Tenant provides the Landlord with notice…to breach this Tenancy 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 $1650 as liquidated damages and not as a penalty for the pre-estimated cost associated with re-renting the rental unit…

The addendum is signed by the Tenant and for the Landlord.

The Tenant testified that he vacated the rental unit at the end of April or May 01, 2019.

The Agent testified that the Tenant did not vacate the rental unit until the move-out inspection on May 06, 2019. The Agent testified that the Tenant provided keys for the rental unit May 06, 2019.

The Tenant testified that he gave formal notice of his forwarding address to the Landlord May 30, 2019. The Agent disagreed and testified that he received the forwarding address in the first or second week of June.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Agent testified that the parties did a move-in inspection January 31, 2019. The Agent testified that the unit was empty of the Tenant's possessions at the time. The Agent testified that a move-in Condition Inspection Report (CIR) was done and signed by both parties. The Agent testified that a copy of the CIR was provided to the Tenant and emailed February 01, 2019.

The Tenant denied that a move-in inspection was done. The Tenant did not have a copy of the CIR with him during the hearing and therefore could not comment on the signatures on the CIR.

The parties agreed a move-out inspection was done. The Tenant testified it was done May 02, 2019 or May 06, 2019. The Agent testified it was done May 06, 2019. The parties agreed the unit was empty of the Tenant's possessions at the time. The parties agreed a move-out CIR was done and signed by both parties. The Tenant testified that he received the CIR with the evidence package at the beginning of September.

The Agent testified that the CIR was in the evidence package sent to the Tenant by registered mail June 20, 2019 with Tracking Number 1. The Agent provided the address the package was sent to. The Tenant testified that this was his lawyer's office. The Tenant testified that he never received this package and that he received the evidence through his lawyer. I looked Tracking Number 1 up on the Canada Post website which shows it was delivered and signed for June 21, 2019.

The Landlord submitted a copy of the CIR.

The parties provided the following testimony and submissions in relation to the compensation sought.

LANDLORD'S APPLICATION

Floor repair $2,887.00

The Agent testified as follows. The floors were fine on move-in. The unit was furnished. The Tenant replaced the couch in the unit with his own. The Tenant put the original couch back at the end of the tenancy. At the time of the move-out inspection, the floor was covered by the couch. He later noticed marks on the floor. The move-out CIR does not show this damage because he did not move furniture during the inspection and the marks were covered. The photos submitted show the scratches. The floor has to be replaced. A quote for this has been submitted.

The Tenant testified as follows. The floors were pristine and without scratches on May 01, 2019 when he took the photos submitted as evidence. This is consistent with the move-out CIR. If his couch has caused damage, this would have been noticed during

the move-out inspection. The Landlord obtained the quote submitted in June, after the new tenant had moved into the rental unit.

In reply, the Agent testified that the contractor who provided the quote looked at the floor prior to the new tenant moving in. The Agent also testified that the new tenant did not move furniture into the rental unit because it was fully furnished.

The Landlord and Tenant submitted photos of the rental unit in relation to this issue.

Replace lock $117.60

The Landlord sought $117.60 for changing the lock on the rental unit. The Agent testified that the Tenant broke into the unit using keys when the new tenant was there and the new tenant asked that the locks be changed. The Agent pointed to emails and texts submitted between him and the new tenant.

The Tenant testified that he gave the keys to the rental unit back. The Tenant testified that he went to the rental unit to see if someone had moved in. The Tenant testified that a neighbour let him into the building. The Tenant testified that he approached the rental unit and the door was open and the keys were in the lock. The Tenant testified that he knocked on the door and realised there was a woman inside. The Tenant testified that he had a friendly discussion with the woman and that there were no issues.

The Agent submitted texts between him and the new tenant in which the new tenant states that the Tenant opened her door when she was in the living room. The new tenant asks that the locks be changed.

The Landlord submitted an invoice dated May 31, 2019 for changing the locks.

Cleaning $150.00

The Agent testified as follows. After the Tenant gave notice ending the tenancy, he tried to re-rent the unit and did showings. The potential new tenants raised issues about the cleanliness of the unit. The Agent sent a text to the Tenant advising him of this and telling him the Agent could get a cleaner to attend. The Tenant agreed to a cleaner attending. The Tenant never paid for this cost. An invoice for the cleaning has been submitted. The cleaning was done between May 04, 2019 and May 05, 2019.

The Tenant testified that he vacated the rental unit at the end of April. The Tenant pointed to photos submitted showing they were taken May 01, 2019 and showing the rental unit was clean. The Tenant submitted that the photos show the rental unit was pristine. The Tenant agreed he did not pay the Landlord for cleaning.

I asked the Tenant why he agreed via text to the Landlord hiring a cleaner if the rental unit was pristine. The Tenant said he wanted his May rent back and wanted the unit to be re-rented so agreed to the cleaning. The Tenant testified that his agreement was on the condition that the rental unit be re-rented for May. The Tenant could not point to where in the documentary evidence this is shown.

The Agent testified that the photos he submitted were from May 04, 2019. The Agent testified that the move-out CIR shows that the cleaning was done prior to May 06, 2019 because there were no issues with cleanliness noted.

The Agent denied that the unit looked like it does in the Tenant's photos submitted and said his only explanation is that the dates on the photos are "doctored". The Agent agreed the Tenant's photos show the original couch back in the rental unit.

In reply, the Tenant submitted that it is difficult to believe the cleaners waited a month to invoice the Landlord for the cleaning. This was in reference to the invoice dated June 02, 2019.

The Landlord and Tenant submitted photos of the rental unit in relation to this issue.

The Landlord submitted texts in which the Agent tells the Tenant prospective tenants are commenting about the unit not being clean. The Agent wrote, "I had a cleaner take a look and she says it's 5 hours at $30 per hour". The Tenant replied, "Do it. After that the only reasons it won't rent are on you". The Agent sent the Tenant a text May 04, 2019 stating the cleaner would be there Monday or Tuesday.

The Landlord submitted an invoice dated June 02, 2019 for cleaning the rental unit for 5 hours at $30.00 per hour for a total of $150.00.

Move out fee $100.00

The Landlord sought the $100.00 move-out fee set out in term 10 of the tenancy agreement. The Agent testified that the Tenant never paid this fee. The Agent confirmed the fee is a strata fee.

At first, the Tenant testified that the move-out fee was a "surprise" to him. The Tenant did not dispute that the move-out fee is a strata fee. The Tenant said he wants proof the Landlord paid the strata the $100.00. The Tenant later testified that he felt the move-out fee was inconsequential when he discovered the Landlord re-rented the unit in May before the end of his lease because he thought the Landlord would be paying him back part of May rent.

Repair and Painting $302.40

The Landlord sought compensation for repair and painting of scratches and marks on the walls of the rental unit at the end of the tenancy. The Agent testified that the scratches and marks are shown in the photos submitted. The Agent pointed out that the Tenant acknowledged the damage in the move-out CIR. The Agent pointed to an invoice submitted for the repairs and painting. The Agent testified that the scratches and marks had to be sanded down. The Agent pointed to the cost of the painting and testified that this was for touch-ups and not to paint the entire unit.

The parties agreed the notations on page three of the CIR under "start of tenancy" were actually made at the end of the tenancy.

The Tenant acknowledged he made the notations on page three of the CIR about paint chips on the wall and marks being a 10 minute job to erase.

The Tenant submitted that the Landlord's photos are fraudulent. The Tenant referred to the Landlord's photos showing the rental unit was dirty compared to his photos showing the rental unit was clean. The Tenant did not point to a photo comparison in relation to the issue of scratches and marks on the walls of the unit. The Tenant testified that the unit was not painted when he attended and spoke to the new tenant on May 30, 2019. The Tenant also questioned the invoices submitted given they were issued June 02, 2019. The Tenant testified that the new tenant had moved into the rental unit by this date.

The Tenant agreed there was a small chip in the bedroom wall and two sticky marks on the walls of the rental unit. The Tenant denied there was further damage to the walls.

In reply, the Agent submitted that the Landlord's photos show the rental unit and issues up close where as the Tenant's photos show the unit from a distance. The Agent also testified that he told the people who worked on the unit to issue the invoice by the first of the month and pointed out that these were not large companies that did the work.

The Landlord and Tenant submitted photos of the rental unit in relation to this issue.

The Landlord submitted an invoice dated June 02, 2019 for repairing paint chips, sanding down glue on walls, prepping and painting for 9 hours at $30.00 per hour for a total of $302.40.

Liquidated damages $1,650.00

The Landlord testified as follows. The Tenant had a fixed term tenancy ending September 30, 2019. The Tenant gave notice April 15, 2019 that he was vacating early. He tried to re-rent the unit. He advertised the unit. The unit was re-rented June 01, 2019. The new tenants moved into the unit May 26, 2019 because it was empty. Term 13 of the addendum to the tenancy agreement applies. The amount is for the cost of re-renting the unit including doing showings and reference checks.

In relation to the Tenant being on a fixed term ending September 30, 2019, the Agent relied on emails between the parties dated March 28, 2019 to March 31, 2019. In the emails, the Tenant states, "I am going to exercise my option to extend my sublease…for 6 months from the 4 months originally agreed to. If it is possible I would like to extend this to 7 or 8 months…please let me know if you need anything else to extend the term…" The Agent responded, "Yes, we can certainly extend your tenancy agreement for 8 months…I will revise the tenancy agreement to reflect the change." The Tenant responded, "I will drop off 4 post dated cheques this week-end that will cover June thru September, making my move out date September 30, 2019."

The Tenant testified about an opportunity that arose for a new place and choosing to take it. The Tenant testified that he asked the Agent to re-rent the unit and the Agent was positive about this. I asked the Tenant if he agreed the term of the tenancy was extended to September 30, 2019. The Tenant replied no, that he wanted to exercise that option. The Tenant testified that he gave notice ending the tenancy over the phone mid March.

I indicated to both parties that the issue is the liquidated damages clause not loss of rent. The Tenant did not know what liquidated damages were and did not have the tenancy agreement with him to refer to term 13 in the addendum.

Incentive to lease unit $450.00

The Agent testified that the Tenant suggested and agreed to providing a move-in bonus as an incentive to potential tenants to re-rent the unit thus relieving him of his obligation to pay for loss of rent. The Agent testified that he verbally told potential tenants about the move-in incentive. The Agent testified that the new tenant accepted the move-in incentive and that it was deducted from their security deposit.

The Tenant submitted that he does not believe the new tenant received the move-in bonus.

TENANT'S APPLICATION

Portion of May rent $605.00

The Tenant testified that he paid rent up until May 31, 2019. The Tenant testified that the new tenant moved into the rental unit mid-May. The Tenant submitted that he should not be responsible for paying rent for the period in which the new tenant had moved in and that the Landlord should refund $605.00. The Tenant relied on an Affidavit submitted to support his position about the new tenant moving in mid-May. The Tenant testified that the new tenant was not just moving when he spoke to her and that he could see her personal items in the unit.

The Agent testified that, pursuant to section 26 of the *Act*, the Tenant was required to pay rent when due under the tenancy agreement. The Agent testified that the Tenant was required to pay rent in full by the first of each month pursuant to the tenancy agreement. The Agent testified that there was no agreement that the Tenant would be reimbursed for part of May. The Agent testified that the new tenancy agreement did not start until June 01, 2019 and that the new tenant started moving in May 26, 2019. The Agent testified that the new tenant did not start paying rent until June 01, 2019.
The Tenant submitted an Affidavit from P.H. stating as follows. She attended the rental unit May 30, 2019 with the Tenant. The keys to the rental unit were hanging on the outside of the door and the door was ajar. They did not hear noise so pushed on the

door. The new tenant advised that she had lived in the unit for 10 days. The unit looked clean and undamaged.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure (the "Rules"), it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning "it is more likely than not that the facts occurred as claimed".

Section 7 of the *Residential Tenancy Act* (the "*Act*") states:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

It appears the CIR was signed by the Tenant and for the Landlord on move-in and move-out. The Tenant did not have the CIR in front of him during the hearing to make submissions on the signatures and therefore I do not have an explanation from the Tenant about why the CIR is signed if the parties did not do a move-in inspection. In the circumstances, I find it more likely that the parties did do a move-in inspection. Given this, and the testimony of the parties about the move-out inspection, I am satisfied the Tenant participated in both and find he did not extinguish his rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

As stated, I am satisfied someone for the Landlord did the move-in inspection. Based on the CIR, I am satisfied this was completed on move-in. In relation to whether a copy was given to the Tenant, I prefer the Agent's testimony on this point given the Tenant's testimony about the move-in inspection is contradicted by the CIR. I accept that the CIR was given to the Tenant within seven days as required. I am not satisfied the Landlord extinguished their right to the security deposit under section 24 of the *Act*.

Based on the testimony of the parties, I accept that the Landlord participated in the move-out inspection and completed the CIR. I accept the testimony that the CIR was sent to the service address for the Tenant June 20, 2019 given the Agent was able to provide a tracking number for this and the Canada Post website shows the package was delivered and signed for June 21, 2019. I am not satisfied the Landlord extinguished their right to the security deposit under section 36 of the *Act*.

Based on the CIR, I accept that the move-out inspection was done May 06, 2019. I accept that this was the last day of the tenancy for the purposes of section 38(1) of the *Act*.

The parties disagreed about when the Tenant provided his forwarding address. Neither pointed to documentary evidence to support their position. When a tenant wants double their security deposit back, it is the tenant who has the onus to prove when their forwarding address was provided. I am not satisfied the Tenant has proven that his forwarding address was provided May 30, 2019 as the Tenant did not point to further evidence to support this. Therefore, I accept that the Landlord received the forwarding address in the first or second week of June.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of receiving the Tenant's forwarding address. The Landlord's Application was filed June 12, 2019. I accept that the Landlord complied

with section 38(1) of the *Act*. Therefore, the Tenant is not entitled to double the security deposit back pursuant to section 38(6) of the *Act*.

I will now address the claims for compensation.

LANDLORD'S APPLICATION

Floor repair $2,887.00

Section 32 of the *Act* states:

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37(2) of the *Act* states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…

The CIR does not note the marks or scratches on the floor.

I have looked at the photos of the damage to the floor. I am not satisfied from the photos that the damage is beyond reasonable wear and tear. I find from the photos that there are only a few scratches that are superficial and relatively small. The scratches are the type of scratches one would expect to occur from normal use of a rental unit. In these circumstances, I am not satisfied the Tenant breached the *Act*. Nor am I satisfied the Landlord is entitled to compensation for floor repairs.

Replace lock $117.60

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must…

(a) 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.

The amount sought arises out of the new tenant asking the Landlord to change the locks because the Tenant entered the rental unit after the new tenant had moved in. The parties disagreed about what occurred leading up to the new tenant asking for the locks to be changed. Based on the Affidavit of P.H., which supports the Tenant's testimony, I accept that the Tenant did not use keys to gain access to the rental unit on May 30, 2019. I prefer the sworn or affirmed Affidavit of P.H. over the text messages from the new tenant. Therefore, I am not satisfied the Tenant used keys to enter the rental unit on May 30, 2019. Nor am I satisfied that the loss claimed arose from a breach of the *Act* by the Tenant. I decline to award the Landlord the amount sought.

Cleaning $150.00

Section 32 of the *Act* states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The parties disagreed about whether the rental unit was dirty when the Agent asked the Tenant about having a cleaner attend. The Tenant submitted photos showing they were taken May 01, 2019 and showing the rental unit was reasonably clean.

However, the text messages show the Tenant agreed to the Agent having a cleaner attend for 5 hours at $30.00 per hour on May 04, 2019. Given this, I accept that the Tenant is required to reimburse the Landlord for this amount. If the Tenant did not think the rental unit needed to be cleaned, he should not have agreed to the Agent having a cleaner attend. Further, the Tenant cannot agree to the Landlord having a cleaner attend for 5 hours at $30.00 an hour and then later take the position that he should not have to reimburse the Landlord for this amount.

I find the Tenant agreed May 04, 2019 to pay the $150.00 for cleaning and therefore the Landlord is entitled to this amount. I do not accept that the agreement was contingent on the unit being re-rented for May as the documentary evidence does not support this.

Move out fee $100.00

Section 7 of the *Residential Tenancy Regulation* (the "*Regulations*") states:

> 7 (1) A landlord may charge any of the following non-refundable fees…
>
> (f) a move-in or move-out fee charged by a strata corporation to the landlord;

The Agent testified that the move-out fee is a strata fee. The Tenant did not dispute this. I accept that the Landlord was permitted to charge this fee. The fee is set out in term 10 of the addendum to the tenancy agreement. The Tenant signed the tenancy agreement and addendum. The Tenant is bound by the terms of the tenancy agreement and addendum. The Tenant was required to pay a $100.00 move out fee. There is no issue that the Tenant did not do so. The Landlord is entitled to recover this amount.

Repair and Painting $302.40

Section 21 of the *Regulations* states:

> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The CIR shows the walls were fine on move-in and were marked, chipped and had glue on them on move out. The Tenant indicated he agreed with the move out CIR but indicated "10 min job eraser" in relation to "marks on walls".

The Landlord submitted photos showing some marks and chips on the walls.

The Tenant submitted the Affidavit from P.H. which refers to the unit being clean and undamaged. The Tenant submitted photos of the rental unit.

I accept based on the CIR and Landlord's photos that there were some marks and chips on the walls. I do not accept that P.H. would have been able to view marks or chips on the walls of the rental unit when she attended with the Tenant as it is my understanding they were out in the hall. I do not accept that the Tenant's photos would show the

marks or chips given the quality of these and given how far the photos are from the walls.

However, I do not find that the marks or chips on the walls, as shown in the Landlord's photos, are numerous. Nor do I accept that they are substantial, except for one or two.

Based on the CIR and Landlord's photos, I accept that the Tenant left one or two marks or chips that are beyond reasonable wear and tear and therefore breached section 37 of the *Act* in relation to these.

I accept that the Landlord is entitled to some compensation for this whether the marks and chips were repaired before or after the new tenant moved in as I am satisfied based on the CIR that it is the Tenant who caused them.

However, I cannot accept based on the CIR and photos that the Landlord is entitled to $302.40 in compensation for the marks and chips on the walls. I do not accept that the evidence supports such a cost. For example, the invoice shows the worker spent nine hours repairing, prepping and painting. I am not satisfied nine hours of work was required to address the marks and chips that I accept are beyond reasonable wear and tear. I can only be satisfied that the Landlord is entitled to half the amount sought and award the Landlord $150.00.

Liquidated damages $1,650.00

Section 14(2) of the *Act* states:

> (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Based on the written tenancy agreement, I find the tenancy was originally for a fixed term from February 01, 2019 to May 31, 2019. Based on the emails submitted, I accept that the parties agreed to extend the term to September 30, 2019. There is no issue that the Tenant gave notice ending the tenancy earlier than September 30, 2019 as the parties agreed on this. I find the Tenant breached the tenancy agreement by vacating before the end of the fixed term. I find term 13 of the addendum applies. The Tenant signed the tenancy agreement and addendum. The Tenant is bound by the terms of the tenancy agreement and addendum.

Policy Guideline 4 addresses liquidated damages and states in part:

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. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

Based on the written tenancy agreement and testimony of the Agent, I accept that the liquidated damages clause is a pre-estimate of the costs associated with re-renting the unit. I do not find the amount extravagant or oppressive when I consider the rent amount. Further, the Tenant did not address these points or provide a basis for declining to uphold the liquidated damages clause as the Tenant did not know what liquidated damages were. In the circumstances, I am satisfied the Landlord is entitled to the amount sought.

Incentive to lease unit $450.00

I accept that the Tenant suggested and agreed to a move-in bonus for potential tenants in order to assist with re-renting the unit. The Tenant did not dispute this. This is supported in the text messages.

The Tenant did dispute that the Landlord deducted $450.00 from the new tenant's security deposit as stated by the Agent. This is the Landlord's application and the Landlord's onus to prove. The Landlord did not submit documentary evidence showing $450.00 was deducted from the new tenant's security deposit. This would have been simple evidence to submit as there would be some documentation of this. In the absence of further evidence, I am not satisfied the Landlord incurred a loss of $450.00 in relation to a move-in bonus and therefore decline to award the Landlord the amount sought.

TENANT'S APPLICATION

Portion of May rent $605.00

The Tenant sought a portion of May rent due to his position that the new tenant moved into the rental unit mid-May and he paid for all of May. The Agent testified that the new tenant moved in May 26, 2019 and did not pay rent until June 01, 2019.

This is the Tenant's application and his onus to prove. I am not satisfied based on his testimony and the Affidavit of P.H. that the new tenant moved into the rental unit mid May. I do not find this evidence sufficiently reliable as there is nothing from the new tenant confirming this.

The Agent testified that the Landlord did not collect rent from the new tenant until June 01, 2019. There is insufficient evidence before me that the Landlord did. Therefore, I am not satisfied the Landlord collected rent from both the Tenant and new tenant for part of May. This was the basis for the Tenant's claim. I therefore decline to award the Tenant the compensation sought.

Filing fees

Given the Landlord was partially successful, I award the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Given the Tenant was not successful, I decline to award him reimbursement for the filing fee.

In summary, the parties are entitled to the following compensation.

LANDLORD:

Item	Description	Amount
1	Floor repair	-
2	Replace lock	-
3	Cleaning unit	$150.00
4	Move out fee	$100.00
5	Repair and paint unit	$150.00
6	Liquidated damages	$1,650.00
7	Incentive to lease unit	-
8	Filing fee	$100.00
	TOTAL	**$2,150.00**

TENANT:

Item	Description	Amount
1	Portion of May rent	-
2	Double security deposit	-
3	Filing fee	-
	TOTAL	**-**

The Landlord is entitled to $2,150.00. The Landlord can keep the $825.00 security deposit pursuant to section 72(2) of the *Act*. Pursuant to section 67 of the *Act,* the Landlord is issued a monetary order for the remaining $1,325.00.

Conclusion

The Landlord is entitled to $2,150.00. The Landlord can keep the $825.00 security deposit. The Landlord is issued a monetary order for the remaining $1,325.00. This order must be served on the Tenant as soon as possible. If the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Tenant's Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 18, 2019

Residential Tenancy Branch