



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on January 10, 2020. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and his agent attended the hearing (referred to as the "Landlord"). However, the Tenants did not. The Landlord initially filed his application on August 14, 2019, and was given a Notice of Hearing on August 23, 2019. Subsequently, the Landlord stated he sent this Notice of Hearing and his evidence to the Tenants by registered mail on August 23, 2019. Proof of mailing was provided. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed served with this package on August 28, 2019.

There was a scheduling error, and the hearing, which was supposed to be held on December 11, 2019, had to be rescheduled, as the time listed on the first Notice of Hearing was not the time that was booked for the hearing. As such, our office regenerated a new Notice of Hearing on December 13, 2019. The hearing time was set to January 10, 2020, at 9:30 am. The Landlord re-sent his corrected Notice of Hearing by registered mail on December 16, 2019. Proof of mailing was provided. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed served with this package on December 21, 2019.

All of these packages were sent to the address the Tenants listed as their forwarding address on the move-out documentation. I find the Landlord has sufficiently served the Tenants with his application and evidence.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to compensation for unpaid rent or utilities?

Background and Evidence

The Landlord provided a copy of the Tenancy Agreement which specifies that the Tenants moved into the rental unit on May 1, 2019, and signed a 1 year fixed term tenancy agreement. Monthly rent was set at \$2,150.00 and was due on the first of the month. The Landlord collected a security deposit in the amount of \$1,025.00.

The Landlord stated that the Tenants vacated the rental unit on August 10, 2019, and a move-out inspection was done on that date. At that time, the Tenants had not paid July 2019 rent, August 2019 rent, or any utility bills for a past couple months. As laid out in the Move-out Worksheet the Tenants had a balance outstanding in the amount of \$4,504.39. Further, on this worksheet, the Tenants agreed that the amounts were correct and also to allow the Landlord to retain their security deposit to offset what they owed. The Tenants signed this document on August 10, 2019. In summary, they agreed to the forfeiture of their deposit, and also agreed that \$3,429.39 was still owed even after the deposit was handed over to the Landlord.

Although the Landlord indicated in the accounting ledger that the Tenants deposit was \$1,075.00, the Landlord clarified that they only held \$1,025.00. However, the Landlord stated that the math they did in the ledger, and in the move-out worksheet used the \$1,075.00 amount rather than the \$1,025.00. The Landlord added up the accruals and debts of the Tenants and deducted the \$1,075.00 amount rather than the \$1,025.00, which benefited the Tenants. This end of tenancy accounting mistake appears to be in the Tenants favour as their debt was reduced by an extra \$50.00, and the Landlord did not attempt to correct the amounts they are seeking in the hearing.

The Landlord is also seeking compensation for liquidated damages. The Landlord pointed to the tenancy agreement, where the Tenants agreed to the following term:

“If the Tenant terminates the tenancy before the date specified, then the landlord shall charge and the tenant agrees to pay the sum of \$2,150.00 liquidated damages and such sum may be deducted from the security deposit or otherwise collected. Such payment shall release the tenant from liability to pay rent for the balance of the term of this agreement.”

When I asked the Landlord to explain and substantiate the liquidated damages clause, he stated that it is a term the tenants agreed to, and they should be liable to pay it because they broke the lease. On the Landlord’s monetary order worksheet, he indicated he is seeking \$2,150.00 for breach of this clause and listed it as “1 month rent – penalty”.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The Landlord is seeking 1 month’s compensation for liquidated damages, as per the tenancy agreement provided. I note that the Tenants have agreed, in writing, as per the tenancy agreement provided into evidence, that the Landlord be paid 1 months’ rent in compensation if the lease is ended prior to the end of the agreed upon term.

Residential Tenancy Policy Guideline 4 explains liquidated damages. 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 fixed term by the tenant. 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 this case, I find that the liquidated damages clause in the tenancy agreement is not an enforceable term. There is insufficient evidence to show that the liquidated damages amount of \$2,150.00 is a genuine pre-estimate of the Landlord’s costs to re-rent the unit. I note the Landlord did not provide any explanation as to what the costs were, with respect to re-renting the unit, or what they expected them to be at the time the

agreement was signed. Further, the Landlord stated in his own monetary order worksheet that the amount was a “penalty” in the amount of 1 month’s worth of rent. I find it more likely than not that this amount is a penalty, rather than a genuine pre-estimate of the costs associated with re-renting.

The Landlord’s claim for \$2,150.00 is dismissed, without leave.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find the Tenants breached the agreement by leaving early, and although the liquidated damages clause is not enforceable, I award a nominal amount to the Landlord for the Tenant’s breach of the fixed term agreement. I award \$200.00 for this item.

Next, I turn to the Landlord’s request for compensation in the amount of \$3,429.39 for unpaid rent and utilities. Based on the undisputed evidence and testimony, I find the Tenants are responsible for this amount, in full. I note the Landlord itemized, in the move-out worksheet signed by the Tenants, what this amount was based upon. I find the Tenants agreed that they owed \$4,504.39, and they agreed to let the Landlord withhold their security deposit. The Tenants also signed that they agreed to still owing \$3,429.39 for these amounts, even after the security deposit was forfeited. Based on the evidence, testimony, and the move-out agreement made by the parties, I find the Tenants are liable for this amount, in full.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the Tenants to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

In summary, I award the Landlord a monetary order as follows:

Claim	Amount
Nominal damages	\$200.00
Unpaid rent/utilities	\$3,429.39
Filing Fee	\$100.00
TOTAL:	\$3,729.39

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,729.39**. This order must be served on the Tenants. If the Tenants fail 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: January 10, 2020

Residential Tenancy Branch