



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The landlords filed an Application for Dispute Resolution (the “Application”) on July 26, 2020 seeking an order to recover monetary loss for unpaid rent, damages, and compensation for other money owed by the tenant. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on October 1, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlords attended the hearing; the tenants did not attend. The tenants did not submit or serve documents as evidence for this hearing.

In the hearing, the landlords provided that they delivered notice of this hearing to the tenants. They did so by registered mail, to an address the tenants provided initially on their application for tenancy. It is the address of another family member, and the landlords understood this to be a forwarding address.

In consideration of this testimony presented by the landlords, and with consideration to section 89 of the *Act*, I find the tenants were sufficiently served with notice of this hearing, as well as the landlord’s prepared evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damages, or other money owed, pursuant to section 67 of the *Act*?

Is the landlord entitled to apply the security deposit against any amounts owing, pursuant to section 72 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. Both the landlords and tenants signed this agreement on August 29, 2019 for the tenancy starting on September 1. This was for a fixed term ending on August 31, 2020. The monthly rent was \$1,450. The tenants paid a security deposit of \$725. The agreement contained the additional term that the tenants pay “45% of water, electricity and heat.”

An addendum forms part of the agreement. It states: “If the tenant wishes to end tenancy before the lease expires, the tenant will pay liquidated damages to the landlord.” A late payment fee is found in the tenancy agreement addendum at clause 32: “If the tenant pays rent later than the 1st of the month, tenant will pay the landlord a fee of \$25 as late payment fee.”

The tenants gave their notice to end the tenancy on May 17, for the end-of-tenancy date of June 15. On May 18, the landlords informed the tenants that they are advertising for new tenants, letting the tenants know they “would be responsible for the gap.” The landlords scheduled visits for potential new tenants and each time the landlord let the tenants know about the visitors.

On the last day of the tenancy, June 15, the tenants and landlords met for a condition inspection meeting. When the tenants were handing over the keys, they made arrangements with the landlord to visit again to ensure thorough cleaning. After more cleaning on another date, the landlord tried to schedule another move-out inspection. To this, the tenants did not respond and did not return to the rental unit.

The landlord completed a ‘Monetary Order Worksheet’ in preparation for this hearing. It lists the following pieces of their monetary claim:

#	Item(s)	\$ amount
1	June 1 – 15 2020 rent	425.00
2	June late payment fee	25.00
3	damage to kitchen cabinet	102.48
4	professional cleaning	73.50
5	liquidated damages	725.00
6	unpaid utilities	233.50
7	Application fee	100
	Total	1,684.48

The amount of rent owing (\$425 above) is one-half month rent (\$725), minus \$300 provided by BC Housing rent supplement.

The landlord provides photos showing damage to the kitchen cabinet and submitted a receipt from the contractor showing materials and labour. A receipt from a cleaning company dated June 30, 2020 verifies the amount specified by the landlord in their claim. Both the need for cleaning and the kitchen cabinet repair are set out in the Condition Inspection Report of June 25, 2020 and the landlords provided photos showing the same.

The landlords provided an email dated July 16, 2020 setting out amounts owing for each of four utilities, accounting for mid-July 2019 through to May 2020. This shows the 45% amount as set out in the tenancy agreement, with the amount being reduced to 40% as of April 1, 2020. The landlord also provided copies of utilities bills that show the amounts listed in the ledger in the email.

The tenant did not attend the hearing and did not provide documentary evidence prior to the hearing date.

Analysis

From the testimony of the landlords I am satisfied that a tenancy agreement was in place. They provided the specific term of the rental amount. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the evidence before me that the tenant left the unit without paying the June rent amount. I so award compensation for the rent amount of \$425, and the late payment fee of \$25.

The landlords' evidence is clear that utility amounts were left owing. I find the landlord took early initiative in mitigating the impact by lowering the % rate of utilities to be paid by the tenant. The copies of bills are sufficient to show these amounts. I award the claimed amount of \$233.50 to the landlords for compensation.

I find damage to the kitchen cabinet ensued, requiring the landlords to hire a contractor to repair. Similarly, I find two hours of cleaning service time, as presented in the receipt and depicted in photos is a recoverable damage to be paid to the landlords.

The Residential Policy Guideline 4 on Liquidated Damages is in place to provide a statement of the policy intent of the *Act*. It provides: "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 [of damages payable] 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."

Here, the clause in question states: "If the tenant wishes to end tenancy before the lease expires, the tenant will pay liquidated damages to the landlord."

I find a framework for this clause is not in place. The term itself does not refer to a pre-estimate of loss, nor explain the basis of a liquidated damages amount. In the hearing, the landlords did not describe how they arrived at an amount that is the equivalent of one-half month's rent. It appears the tenants had no notion of what the liquidated damages amount represents prior to the landlord making this claimed amount at the dispute resolution stage.

As provided for in section 6(3) of the *Act*: "A term of a tenancy agreement is not enforceable if . . . (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it." I find there is no reference to the clause being a pre-estimate of loss; therefore, it is unenforceable as a liquidated damages clause. I find the clause is punitive in nature and make no award for the amount claimed by the landlords here.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlords have established a claim of \$859.48. After setting off the \$725 security deposit, there is a balance of \$134.48. I am authorizing the landlord to keep the security deposit amount and award the balance of \$134.48 as compensation to them.

Because they are successful in their application, I grant the \$100.00 cost of the filing fee to the landlord.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$234.48. 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 *Act*.

Dated: November 18, 2020

Residential Tenancy Branch