



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S

Introduction

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

- a monetary order for money owed or compensation 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.

DM appeared for the tenants in this hearing. 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.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's 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 monetary losses?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Both parties entered into a fixed-term tenancy that was to begin on June 15, 2020 and end on June 30, 2021. The landlord testified that the tenants were able to move in early. Monthly rent was set at \$1,900.00, payable on the first of the month. The landlord collected a security and pet damage deposit in the amounts of \$500.00 each deposit, which the landlord still holds. The tenants moved out on October 31, 2020, and the landlord confirmed that the tenants provided a forwarding address approximately 2 days later. Both parties confirmed that a move-in and move-out inspection was completed, and the landlord submitted a copy of the report in their evidentiary materials. A dispute took place during the move-out inspection, and although the tenants did attend, the move-out report did not end up being signed by the tenants.

The landlord is requesting monetary compensation as follows:

Liquidated Damages	\$200.00
Pest Control	400.00
Repair of Holes in walls	50.00
Replacement Tub Surround	400.00
Missing Cast Iron Fireplace Cover	300.00
Missing Front Doorstop	20.00
Cooktop Clean	50.00
Total Monetary Award Requested	\$1,420.00

The landlord is seeking liquidated damages as set out in the tenancy agreement for the early end of the fixed-term tenancy.

The landlord is also seeking a monetary order for the pest control and repairs to the walls due to the rodent issue. The landlord testified that the home never had a rodent problem until the tenants moved in. The landlord submitted a report from the pest control company that stated:

“Inspection for entry points and rodent activity in three unit residence. Found no visible entry points to indicate that rodents are entering through bottom or top floors. However found windows left open on middle level unit.

Rodents are excellent climbers and can easily enter structure this way. Especially if food is present. Simply shutting windows would thwart rodent entry”.

The landlord testified that there was no rodent issue in the other suites, and that the only reasonable conclusion was that the tenants had caused the rodent problem in the home.

The tenants do not dispute that they had opened the windows, but only after inquiring with the landlord. The tenants testified that the landlord had never installed screens, nor did the landlord prohibit them from opening the windows. The tenants submitted copies of the messages between the parties about opening the windows as the tenants were very hot.

The landlord is also seeking a monetary order to repair the tub surround, which is cracked. The landlord testified that the surround was installed during renovations approximately 4.5 years ago. The landlord testified that the leak only started during this tenancy. The tenants testified that they had discovered the leak in August 2020, and reported the issue to the landlord immediately. The tenants did not know the source of the leak, and testified that they did not cause the crack in the tub surround.

The landlord is also seeking a monetary order for missing fireplace grate, doorstop, and cleaning of the stovetop. The landlord submitted photos of these three items. The tenants dispute causing the damage, and ever using the fireplace.

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

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

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 the tenants did not end the 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. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out earlier than the date specified in the tenancy agreement.

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 \$200.00 as set out in the liquidated damages clause.

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 \$200.00 as liquidated damages in the event that the tenants ended the tenancy before the end of the fixed term. This clause in the contract specified that the amount was not a penalty. Whether or not an amount specified in a contract should be construed as liquidated damages or as a penalty is a question of law to be decided upon on the basis of a consideration of the whole agreement. 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 \$200.00 liquidated damage fee to cover the other costs associated with tenants' early termination of the rental unit.

I am satisfied that the landlord is entitled to a monetary award of \$200.00. I do so as I accept the landlord's assertion that this is not a penalty but a legitimate pre-set charge for ending this fixed term tenancy early. I find this to be a reasonable estimate of the landlord's loss in the event of a breach to cover change over costs, such as advertising, interviewing, administration, and re-renting of the rental unit due to the early termination of this tenancy.

The landlord is seeking a monetary order related to the rodent problem in the home. I have considered the evidence and testimony before me. Although it is undisputed that a rodent problem did exist, I must assess whether the tenants are financially responsible for the monetary losses associated with the problem. Although the tenants did open the windows, and although there is a likely chance that the rodents did enter through the windows as noted in the pest control report, attaching responsibility for problems of this type is exceedingly difficult, especially considering the fact that rodents are a problem in many residential properties. In light of the fact that no rodent problem existed before, I find that there is a chance that the rodent problem did start during this tenancy.

However, I am not satisfied that the rodent problem was directly and solely due to the tenants' deliberate or negligent actions. As noted above, the landlord has a duty to mitigate. I am not satisfied that the tenants have ever been warned against opening the windows in case of a rodent problem. I find that they had the honest intention of opening the windows for the sake of fresh air during the summer, which is a normal and reasonable action on their part as tenants. I do not find that the tenants had attracted the rodents, nor were they negligent in their actions. I find that the problem could have been mitigated with the installation of window screens or other means of ventilation or cooling, and that responsibility should not fall on the tenants. For these reasons, I do not find that the tenants are responsible for the rodent problem, and accordingly, I dismiss the landlord's monetary claims related to the rodent issue.

The landlord is seeking a monetary order for the fireplace grate, which the landlord states went missing during this tenancy. As noted above, the burden of proof falls on the landlord to support that they had suffered a loss due to the other party's actions, and to support the value of this loss. I am not satisfied that the landlord had provided sufficient evidence to support that the tenants had damaged to removed the fireplace grate, nor am I satisfied that the landlord had supported the value of the missing grate either with invoices, receipts, or similar claims of this nature. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

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 evidential materials submitted, as well as the sworn testimony of both parties.

Despite the fact that there is a crack in the tub surround, the tenants dispute causing this crack. In light of the conflicting evidence provided, and taking in consideration that the party claiming the loss bears the burden of proof, I find that the landlord has not provided sufficient evidence to support that the tenants were solely responsible for the damage to the tub surround. Although it is undisputed that the leak was discovered during this tenancy, and that the crack is now visible, I find that the landlord has provided insufficient evidence to support that the tenants caused this crack. There is a possibility that this crack is a result of poor installation, wear and tear, or other factors such as previous damage that was not visible upon inspection. I am not satisfied that the tenants had caused this crack. I find that the tenants had reported a possible leak to the landlord as soon as they had noticed the issue. I do not find that the landlord had provided sufficient evidence to show that the tenants had caused this damage. On this

basis, I dismiss the landlord's monetary claim for damage to tub surround without leave to reapply.

The landlord made a monetary claim for a missing doorstep. In light of the evidence before me, I am not satisfied that the doorstep was intentionally damaged or removed by the tenants. The doorstep could have fallen off due to normal wear and tear. For this reason, I dismiss this portion of the landlord's monetary claim without leave to reapply.

I find that the landlord provided sufficient evidentiary evidence to support that the tenants failed to leave the stovetop in reasonably clean condition, and I find the landlord's monetary claim of \$50.00 to be reasonable for cleaning. Accordingly I allow the landlord a monetary claim of \$50.00 for cleaning.

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.

The landlord continues to hold the tenants' security and pet damage deposit of \$500.00 each deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim. The rest shall be returned to the tenants.

Conclusion

I allow the landlord's monetary claims for liquidated damages and cooktop cleaning as set out in the table below. I allow the landlord to retain a portion of the tenants' security and pet damage deposit in satisfaction of their monetary claim. I issue a Monetary Order in the amount of \$700.00 in the tenants' favour for the return of the remainder of their deposits.

Security and Pet Damage Deposit Held by Landlord	\$1,000.00
Liquidated Damages	-200.00
Cooktop Clean	-50.00
Half of Filing Fee	-50.00
Return of remaining deposit to tenants	\$700.00

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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.

The remainder of the landlord's monetary claims are dismissed without leave to reapply.

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: March 12, 2021

Residential Tenancy Branch