



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSDS-DR

Introduction

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

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The landlord had two agents represent them at this hearing. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Is the tenant entitled to a monetary award for the return of all or a portion of the security deposit?

Background, Evidence

MDA gave the following testimony and submissions on behalf of the landlord. The two-year fixed term tenancy began on August 1, 2020 and ended on November 30, 2020. The tenant was obligated to pay \$5500.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$2750.00 security deposit. MDA testified that on October 1, 2020 the tenant gave notice that she had to end the tenancy early and would move out by November 30, 2020. MDA testified that the tenant conducted two showings of the unit on their behalf on October 23, 2020; one of which ended up renting the unit. MDA testified that the tenant didn't leave the suite reasonably clean and they incurred a cost of \$252.00 for cleaning. MDA seeks the cost of cleaning, the recovery of the \$100.00 filing fee as well as the liquidated damages of \$2750.00 plus \$137.50 GST for the "leasing fee" for a total claim of \$3239.50.

The tenant gave the following testimony. The tenant testified that she agrees to pay for the cost of cleaning the unit. The tenant testified that she did the showings for the landlord, so they were not inconvenienced in any way. The tenant requests the return of her deposit minus the \$252.00 for cleaning. The tenant testified that she ended the tenancy only because her business was "decimated" by COVID-19.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding 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 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.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times. While the landlord testified that they incurred costs for a leasing agent and posting advertisements online, the tenant conducted the only two showings of the unit; one of which was the successful applicant and the current tenant. The landlord was not required to do any showings or invest any time for the showings. MDA testified that she is the leasing agent, however, she was unable to provide sufficient evidence of what her role was or what she did to re-rent the unit. The landlord did not satisfy me that these costs equal \$2750.00 plus \$137.50 GST.

The landlord has not met its burden to show that the liquidated damages are intended to cover the cost of re-rental. The landlord also failed to provide sufficient evidence to demonstrate how this amount was selected as a reasonable pre-estimate for the cost of re-rental at the time of the signing of the tenancy agreement. Therefore, I find that the landlord is attempting to impose a penalty upon the tenant by charging liquidated damages of \$2750.00 plus \$137.50 GST for breach of the fixed term lease. I find that the liquidated damages clause in the tenancy agreement is unenforceable. Accordingly, the landlord's claim for liquidated damages in the amount of \$2750.00 plus \$137.50 GST is dismissed without leave to reapply.

Suite Cleaning - \$252.00.

The tenant agreed that she is responsible for this cost, accordingly; I find that the landlord is entitled to \$252.00.

As the landlord has not been fully successful in their application, they are not entitled to the recovery of the filing fee, accordingly; I dismiss this portion of their application.

The landlord is entitled to retain \$252.00 of the deposit. The remaining \$2498.00 is to be returned to the tenant.

Conclusion

The landlord has established a claim for \$252.00. I order that the landlord retain that amount from the deposit in full satisfaction of the claim. The landlord is to return the remaining \$2498.00 to the tenant. I grant the tenant an order under section 67 for the balance due of \$2498.00. This order may be filed in the Small Claims 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: April 20, 2021

Residential Tenancy Branch