



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Leaf Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD 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 February 22, 2021, and May 18, 2021. The first hearing was adjourned due to a medical emergency, and the merits of the application were discussed at the second hearing. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested; and,
- to recover the cost of the filing fee.

Both parties attended both hearings. Both parties confirmed receipt of each others evidence packages and no issues were raised with respect to service of the evidence, or the Notice of Hearing. I find both parties sufficiently served each other for the purposes of this hearing.

Both parties were 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.

Preliminary Matters

The Landlord filed an application for monetary compensation, totalling \$1,960.00, which was comprised of \$1,650.00 as a liquidated damages clause, plus \$300.00 for cleaning

costs. The Landlord also loosely referred to potentially pursuing lost rent. However, this was not sufficiently articulated or clearly applied for such that it would be part of today's proceeding. This decision will only consider whether the Landlord is entitled to the amounts she specifically laid out and applied for, which total approximately \$1,950.00.

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 keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

The tenancy agreement provided into evidence shows that monthly rent was \$3,300.00, and was due on the first of the month. The tenancy agreement started on March 1, 2020, and was for a fixed term until February 28, 2021. The Landlord stated that they collected a security deposit in the amount of \$1,650.00 and a pet deposit of \$1,650.00. The Landlord stated that they mailed back \$1,340.00 to the Tenants to their forwarding address, but the Landlord was unable to provide any evidence to support this amount was sent, or that the cheque to the Tenants was cashed. The Tenants deny ever getting the cheque, and state they have not received any of the deposits back from the Landlord.

The Landlord is seeking the following 2 items:

- 1) \$1,650.00 - Liquidated Damages

The Landlord pointed to the tenancy agreement to show that there is a liquidated damages clause. This term is as follows:

5. **LIQUIDATED DAMAGES.** If the Tenant breaches a material term of this Agreement that causes the Landlord to end the tenancy before the end of any fixed term, or if the Tenant provides the Landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the Tenant will pay the Landlord the sum of \$_____ as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the Landlord from claiming future rental revenue losses that will remain unliquidated.

The dollar amount under this clause is blank. The Landlord also pointed to the move-out condition inspection report showing the amount of \$1,650.00 worth of Liquidated Damages was listed under the deductions (from deposits held) section. The Tenants noted that they do not agree with the liquidated damages deductions, and signed that

part of the report. The Tenants stated that this amount should not be allowed because there was never any indication as to what the amount was for the liquidated damages clause on the tenancy agreement.

2) \$304.50 – Cleaning costs

The Landlord provided a cleaning invoice to show they paid the above noted amount to clean the rental unit after the Tenants moved out.

The Tenants stated they did not wish to fight this cleaning cost, and were willing to accept responsibility for these costs.

3) \$10.00 – Key replacement

The Landlord briefly mentioned they wanted \$10.00 for a missing key, but did not elaborate on this matter any further. The Landlords also did not include this cost on their monetary worksheet, or in the written explanation on their application.

The Tenants deny they lost any keys.

Analysis

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

First, I turn to item #1 on the list above. I note that Residential Tenancy Policy Guideline 4 provides for 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. If a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum unless the sum is found to be a penalty.

In this case, the Landlord failed to fill in the dollar amount for the liquidated damages clause of the tenancy agreement. As such, I am not satisfied the parties had any agreement, as to what was payable by the Tenants, in the event of a breach of the fixed term lease. Given this part of the tenancy agreement was not properly filled out, I find it

is not an enforceable clause and the Tenants are not responsible for this amount. I dismiss it in full, without leave.

With respect to item #2, I award this item, in full, as the Tenants were willing to accept responsibility for this item, and did not dispute the amount. I award \$304.50, as per the cleaning invoice provided into evidence.

With respect to item #3, I find the Landlord failed to sufficiently lay this out and make it clear to the respondent that this was amount that was being sought on this application. There is no mention of this amount on the monetary worksheet, nor is it mentioned in the written portion of their application. I decline to award this amount, as I find it was not sufficiently laid out, nor was it sufficiently explained in the hearing. I find the Landlords have failed to meet the onus placed on them for this item.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with this application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the Act, I authorize that the security and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. Since the Landlord failed to prove they returned any of the deposits, I will make the monetary order based on the total amount of both deposits, which totalled \$3,300.00.

In summary, I grant the monetary order based on the following:

Claim	Amount
Cleaning fees	\$304.50
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$3,300.00)
TOTAL:	(\$2,895.50)

I order the Landlord to return the balance of the security and deposit to the Tenants, as above, \$2,895.50. A monetary order will be issued to the Tenants for this amount.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$2,895.50**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant 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: May 18, 2021

Residential Tenancy Branch