



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 15, 2020 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the unit
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Agent for the Landlord appeared at the hearing. The Tenants did not appear. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and evidence were sent by registered mail to the Tenants’ forwarding address as provided on the Condition Inspection Report. The Agent confirmed Tracking Numbers 1 and 2 relate to this package. The Landlord submitted the customer receipts for the packages along with the Canada Post tracking information showing the packages were sent December 23, 2020 and delivered December 24, 2020.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post tracking information, I find the Tenants were served in accordance with sections 88(d)

and 89(1)(d) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post tracking information, I find the Tenants received the packages December 24, 2020. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Early termination	\$1,025.00
2	Late fee	\$25.00
3	Cleaning	\$50.00
4	Carpet cleaning	\$189.00
5	Strata violations	\$1,400.00
6	Filing fee	\$100.00
	TOTAL	\$2,789.00

A written tenancy agreement was submitted as evidence. The tenancy started May 01, 2020 and was for a fixed term ending April 30, 2021. Rent was \$2,050.00 due on the first day of each month. The Tenants paid a \$1,025.00 security deposit.

The Agent testified that the tenancy ended November 30, 2020.

The Agent confirmed the Tenants provided their forwarding address on the Condition Inspection Report (the “CIR”) on November 30, 2020.

The Agent confirmed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Agent confirmed the CIR in evidence is accurate. The Agent testified that the CIR was provided to the Tenants in person at both the move-in inspection and move-out inspection.

The Agent testified as follows in relation to the claims.

#1 Early termination \$1,025.00

This item is for liquidated damages. The tenancy agreement was a fixed term tenancy. The Tenants did not fulfill the fixed term tenancy. Section 3.1 of the tenancy agreement applies.

The tenancy ended with a One Month Notice due to the Tenants breaching terms of the tenancy agreement. The Tenants accepted the One Month Notice and vacated.

#2 Late fee \$25.00

This item is for late payment of rent for September. Section 4.1 of the tenancy agreement applies.

#3 Cleaning \$50.00

As per the CIR, the Tenants agreed some cleaning was missed. The Tenants agreed on the CIR to pay for one hour of cleaning. Photos in relation to this item have been submitted. An invoice for \$50.00 for cleaning has been submitted.

#4 Carpet cleaning \$189.00

The Tenants did not have the carpets cleaned as required. The Tenants agreed on the CIR to pay for carpet cleaning. The invoice for the carpet cleaning has been submitted.

#5 Strata violations \$1,400.00

The strata issued \$1,400.00 in fines due to the Tenants. The Tenants were made aware of the strata violations and were issued a One Month Notice for breach of a

material term for violating strata bylaws. The Tenants were provided copies of the fines and were given an opportunity to dispute them. The Tenants signed a Form K at the start of the tenancy. The owner paid the strata fines.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the CIR, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for early termination, a late fee, cleaning and strata violations.

I accept the undisputed testimony of the Agent that the tenancy ended November 30, 2020. This is supported by the One Month Notice and CIR submitted.

Based on the CIR, I accept that the Tenants provided the Landlord with their forwarding address on the CIR on November 30, 2020.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants’ forwarding address in writing to repay the security deposit or claim against it. The Application was filed December 15, 2020, 15 days after the end of the tenancy and the date the Landlord received the Tenants’ forwarding address in writing. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 Early termination \$1,025.00

Section 3.1 of the tenancy agreement states:

...if the Tenant is in breach of...a material term of this Tenancy Agreement that causes the Landlord to end the tenancy before the end of the original Term...then the Tenant must pay the sum of \$1025.00 to the Landlord as liquidated damages and not as a penalty...The Liquidated Damages is an agreed pre-estimate of the

Landlord's administrative costs of advertising and re-renting the Premises as a result of the Early Termination".

Policy Guideline 4 deals with liquidated damages and states in part:

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. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

The Tenants signed the tenancy agreement and are bound by it, including by section 3.1 of the tenancy agreement.

I find based on the tenancy agreement that it was for a fixed term ending April 30, 2021. I have already accepted that the tenancy ended November 30, 2020, prior to the end of the fixed term tenancy.

I accept the undisputed testimony of the Agent that the Tenants breached a material term of the tenancy agreement and were issued a One Month Notice. I also accept that the Tenants accepted the One Month Notice and vacated the rental unit. This is supported by the One Month Notice submitted.

I am satisfied based on the undisputed testimony of the Agent, as well as the above, that section 3.1 of the tenancy agreement applies, and the Tenants must pay the Landlord \$1,025.00 as liquidated damages. I accept based on the wording of the tenancy agreement that this amount is not a penalty and is an agreed pre-estimate of the Landlord's administrative costs of advertising and re-renting the rental unit due to the early end to the tenancy. I do not find the amount extravagant compared to the greatest loss that could follow the stated breach. Nor do I find the amount oppressive to the Tenants. In coming to these findings, I have considered that the amount is only half the monthly rent.

The Landlord is awarded \$1,025.00.

#2 Late fee \$25.00

Section 7 of the *Regulations* states:

7 (1) A landlord may charge any of the following non-refundable fees...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Section 4.1 of the tenancy agreement states that the Tenants will pay a \$25.00 late fee for late payment of rent. The Tenants signed the tenancy agreement and are bound by it, including by section 4.1 of the tenancy agreement.

I accept the undisputed testimony of the Agent that the Tenants paid September rent late and am satisfied the Tenants owe the Landlord \$25.00 pursuant to section 4.1 of the tenancy agreement. This is supported by the rent ledger in evidence.

The Landlord is awarded \$25.00.

#3 Cleaning \$50.00

Section 37 of the *Act* outlines tenants' obligations upon vacating a rental unit and states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

I accept based on the undisputed testimony of the Agent and photos submitted that some areas of the rental unit required cleaning at the end of the tenancy. This is supported by the CIR. I also find that the Tenants agreed on the CIR that one hour of cleaning was required at the end of the tenancy. I am satisfied the Tenants breached section 37 of the *Act* by not leaving the rental unit reasonably clean.

I am satisfied the Landlord had to hire cleaners to complete the cleaning. I am satisfied based on the invoice that the Landlord paid \$50.00 for the cleaning. I find this amount reasonable.

The Landlord is awarded \$50.00.

#4 Carpet cleaning \$189.00

I am satisfied based on the undisputed testimony of the Agent and CIR that the carpets required cleaning at the end of the tenancy. The Tenants agreed on the CIR that carpet cleaning was required. I am satisfied the Tenants breached section 37 of the *Act* by not leaving the carpets clean at the end of the tenancy.

I am satisfied the Landlord had to have the carpets cleaned. I am satisfied based on the invoice that the carpet cleaning cost \$189.00. I find this amount reasonable.

The Landlord is awarded \$189.00.

#5 Strata violations \$1,400.00

I am satisfied based on the undisputed testimony of the Agent that the Tenants signed a Form K at the start of the tenancy and therefore were required to comply with strata bylaws as part of the tenancy.

I am satisfied based on the undisputed testimony of the Agent that the Tenants failed to comply with strata bylaws and incurred strata fines. This is supported by the rent ledger, letters from strata and the One Month Notice.

I accept the undisputed testimony of the Agent that the owner had to pay the strata fines incurred by the Tenants. I accept the undisputed testimony of the Agent that the fines totalled \$1,400.00. This amount is supported by letters in evidence. I am satisfied the Landlord is entitled to compensation for this amount.

The Landlord is awarded \$1,400.00.

#6 Filing fee \$100

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Early termination	\$1,025.00
2	Late fee	\$25.00
3	Cleaning	\$50.00
4	Carpet cleaning	\$189.00
5	Strata violations	\$1,400.00
6	Filing fee	\$100.00
	TOTAL	\$2,789.00

The Landlord can keep the \$1,025.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$1,764.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$2,789.00. The Landlord can keep the \$1,025.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$1,764.00. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it

may be filed in the Provincial Court (Small Claims) 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: May 17, 2021

Residential Tenancy Branch