



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNDL-S, FFL

Introduction

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

- and a monetary order for 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

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:44 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord and their agent, PD, ("landlord"), attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on package on December 31, 2020 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on January 5, 2021, 5 days after mailing. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

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

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.

This fixed-term tenancy began on September 1, 2019, and was to end on August 31, 2020. The tenant moved out on March 31, 2020, before the end of the fixed-term. The monthly rent was set at \$1,700.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$850.00, which the landlord still holds.

The landlord provided the following list of damages and losses for their monetary claim.

Item	Amount
Liquidated Damages	\$1,700.00
Cost of re-painting due to damage caused by tenant	1,260.00
Insurance Deductible for insurance claim	1,000.00
Difference in insurance premiums due to claim (5 years * 12 months * \$13.43)	805.80
Filing Fee	100.00
Total Monetary Order Requested	\$4,865.80

The landlord is seeking a monetary order for the liquidated damages as set out in the tenancy agreement. The landlord submitted a copy of the tenancy agreement which reads:

5-LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy , or is in breach of the Residential Tenancy Act or a material term of this agreement that causes the landlord to end the tenancy before the end of the term, or any subsequent fixed term, the tenant will pay to the landlord the sum **of \$1700** as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the land lord's cost of re-renting the rental unit and must be paid in addition to any other amounts owed by tenant, such as unpaid rent or for damage to the rental unit or residential property.

The landlord testified that the tenant failed to leave the rental unit in reasonably undamaged condition. The landlord submitted photos to show the excessive damage caused by a television mount, which was removed by the tenant. The landlord testified that the tenant failed to repair the damage before moving out. The landlord testified that they had repainted the walls two days before the hearing, which cost the landlord \$1,890.00. The landlord testified that they did not submit the invoice as there was insufficient time to serve the tenant with this new evidence before the hearing, but testified under oath that this is the amount paid. The landlord is seeking 2/3 of the cost to reflect the portion that is the living room. The landlord also submitted the inspection reports.

The landlord testified that the tenant's guest had caused significant damage to the elevator to the extent that the landlord had to file an insurance claim on their personal insurance. The landlord provided documents to support their claim, including the firefighter report, photos, proof of loss document dated November 24, 2020, and strata invoice for the chargeback. The landlord testified that the damage was caused by a guest of the tenant's. The landlord is seeking reimbursement for the \$1,000.00 deductible paid by the landlord, as well as the increased monthly premium the landlord now has to pay due to the claim. The landlord testified that the increase would be in place for 5 years. The landlord submitted the pre-authorized debit agreement for November 2019 that shows a monthly premium of \$55.94, and another document that shows billing details of a monthly premium of \$69.37, with the next payment processed on January 5, 2021, and subsequent premiums processed on the 5th day of each month.

Analysis

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 tenant 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 tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No application for dispute resolution have been filed by the tenant. The tenant moved out earlier than the date specified in the tenancy agreement.

I must now consider whether the landlord is entitled to the \$1,700.00 in liquidated damages.

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...

I have reviewed the written tenancy agreement submitted by the landlord. I am satisfied that the landlord had clearly stipulated on the tenancy agreement that the tenant would be responsible for the amount claimed by the landlord as liquidated damages. I am satisfied that the amount to be a genuine and reasonable pre-estimate of the losses

associated with locating a new tenant in the event of an early termination of the fixed-term tenancy. Accordingly, I allow this portion of the landlord's monetary claim.

In addition to liquidated damages, the landlord is also seeking monetary orders for losses associated with this tenancy.

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 prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their application.

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 except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenant did not take reasonable care and attention when vacating the home. I find that the landlord provided detailed evidence to support the losses claimed, including a copy of the move-in and move-out inspection reports, photos of the damage, as well as a quotation for the amount claimed. I accept the undisputed testimony of the landlord that they had suffered the losses claimed due to the tenant's failure to leave the home in reasonably undamaged condition. Accordingly, I find the landlord is entitled to compensation for the damage in the amount claimed.

I have reviewed the evidence submitted, and I am satisfied that the landlord had to file an insurance claim after the strata for the building had determined that the tenant's guest had caused damage to the elevator. I am satisfied that the landlord had to pay a \$1,000.00 deductible as a result of this claim. Accordingly, I allow the landlord a monetary order for \$1,000.00.

The landlord also provided documentation to show that the insurance claim resulted in a higher monthly premium, I find that the landlord's monthly premium increased by \$13.43. As the *Act* only allows an applicant to claim for losses already incurred, and not future losses, and as the landlord is billed on a monthly basis, I allow the landlord to recover the increase in premiums for the months beginning December 2020 through to

May 2021 for a total monetary order of \$80.58. I dismiss the remainder of the amount claimed with leave to reapply.

As the landlord was successful in their application, I am allowing the landlord to recovery the filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$850.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$850.00 in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$3,290.58 in the landlord's favour under the following terms which allows a monetary award for money owed, as well as the losses associated with the tenant's failure to comply with the *Act*.

Item	Amount
Liquidated Damages	\$1,700.00
Cost of re-painting due to damage caused by tenant	1,260.00
Insurance Deductible for insurance claim	1,000.00
Difference in insurance premiums due to claim (6 months * \$13.43)	80.58
Filing Fee	100.00
Less Security Deposit Held	-850.00
Total Monetary Order	\$3,290.58

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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.

I dismiss the remainder of the landlord's monetary claim related to the increase in insurance premiums with leave to reapply. Liberty to reapply is not an extension of any applicable limitation periods.

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 5, 2021

Residential Tenancy Branch