



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

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 for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's counsel, K.N. and agent/witness, R.P. (the landlord) attended the hearing via conference call and provided testimony.

At the outset, the landlord stated that he had been contacted approximately 1 hour before the scheduled hearing by the tenant. The landlord stated that the tenant had requested an adjournment due to an emergency involving a family member suffering a stroke and was in hospital. The landlord stated that he believed the tenant and would consent to the adjournment. The landlord stated that this is a monetary issue and that there is no prejudice to the landlord in adjourning the hearing. In this case, I accept the landlord's testimony and the landlord's non-objection to the adjournment request. On this basis, the landlord's application was adjourned. Both parties were notified that a new notice of adjournment will be sent to both parties as per the addresses listed on file for this application. The landlord confirmed the email address for the landlord's service. Both parties are advised that no new evidence is to be submitted nor shall it be accepted.

On June 21, 2021 the hearing resumed with both parties. Both parties were given the opportunity to make submissions, present evidence and make arguments.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the original notice of hearing package via Canada Post Registered Mail on December 1, 2020. Both parties also confirmed the landlord served all 9 documentary evidence files to the tenant in the initial hearing package and a subsequent Canada Post Registered Mail package. The tenant stated that she did not serve the landlord with her submitted 1 documentary evidence package. Pursuant to section 88 and 89 of the Act, I find that the tenant was properly served with the landlord's documentary evidence submissions via Canada Post Registered Mail as confirmed by the tenant. The tenant's documentary evidence file was excluded from consideration in this hearing, but the tenant was notified she may still present any direct testimony during the hearing.

At the outset, both parties confirmed that the security deposit was no longer an issue as an agreement was made for its return. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 15, 2019 on a fixed term tenancy ending on July 31, 2021 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated June 26, 2019. The monthly rent was \$1,350.00 payable on the 1st day of each month. A security deposit of \$675.00 was paid on June 26, 2019.

The landlord seeks a monetary order of \$1,450.00 which consists of:

\$1,350.00	Liquidated Damages
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\$100.00	Filing Fee
\$1,450.00	Total Claim

The landlord stated that the tenant provided notice to end the tenancy which the landlord received on November 22, 2020. The landlord stated that the tenant moved-out early prior to the expiry of the lease term of July 31, 2021 on November 25, 2020 as per a submitted copy of the letter dated October 30, 2020.

The landlord stated that clause 6 of the signed tenancy agreement provides for the landlord's liquidated damages in this case.

The landlord referenced clause 6 of the signed tenancy agreement which states:

*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 to the landlord the sum of \$1350 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 further rental revenue losses that will remain unliquidated.*

[reproduced as written]

The tenant provided direct testimony stating, "nothing left to say", but argued against the landlord's request for recovery of the \$100.00 filing fee as the landlord had applied prior to the end of the tenancy.

Analysis

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/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, I accept the undisputed affirmed evidence of both parties and find that the tenant vacated the rental unit after providing notice to end the tenancy on November 25, 2020 in a letter dated October 30, 2020. Both parties confirmed that the agreed upon fixed term tenancy ending was on July 31, 2021. Both parties agreed that clause #6, liquidated damages was agreed to as part of the signed tenancy agreement dated June 26, 2019 in which the tenant agreed to pay to the tenant \$1,350.00. On this basis, I find that the landlord has been successful in claim for \$1,350.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$1,450.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial 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: June 21, 2021

Residential Tenancy Branch