



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants. Neither party raised any issues related to the service of documents for this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for liquidated damages and for damages to or cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on October 27, 2020 for a 1-year fixed term tenancy beginning on November 1, 2020 for a monthly rent of \$2,500.00 due on the first of each month with a security deposit of \$1,250.00 paid. The tenancy ended on June 1, 2021. The agreement included the following clauses relevant to the landlord's claim:
 - Clause 19: The Tenant agrees that they will ensure all lights in the property are working at the time of the move-out condition report. Failure to do so will result in a \$25 per light bulb replacement fee. In addition, the Tenant agrees that should the property not be in the same cleanliness as was reported in the move-in condition report, the Landlord can charge the tenant for cleaning costs and a service fee of \$50 per hour based on the time needed to restore the property to the filed condition;
 - Clause 20: The Tenant, at the Tenant's expense will have a professional cleaning company clean the carpets at the end of the tenancy and annually if requested by the landlord. The Tenant will provide a valid

- receipt for this service. Failure to do so will result in the tenant being charged for the carpet cleaning and a service fee of \$100 per room; and
- Clause 37: If the tenant ends the fixed term tenancy before the end of the original term or if the tenant fails to give one full calendar months' notice on a month-to-month tenancy, the Landlord may, at the Landlord's option treat this Agreement as being at an end. In such event, the sum of half a month's rent plus GST will be paid by the Tenant to the Landlord as Liquidated Damages and not as a penalty to cover the administrative costs or re-renting the rental unit. The Landlord and Tenant acknowledge and agree that the payment of Liquidated Damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or equity, including, but not limited to damage of the rental unit or residential property and damages as a result of lost rental income due to the Tenant's breach of any term of this agreement; and
 - A copy of a Condition Inspection Report (CIR) completed at the start and end of the tenancy recording the condition of the rental unit as well as several photographs of specific conditions.

The landlord seeks compensation as follows:

Description	Amount
Replacement of Lightbulbs	\$50.00
Wall Repair	\$290.00
Carpet Cleaning	\$270.00
Liquidated Damages	\$1,250.00
Total	\$1,860.00

The landlord's CIR documents that there were two light bulbs not working at the end of the tenancy, one in the hallway/stairwell and one in the main bathroom. The landlord relies on Clause 19 of the tenancy agreement to justify the cost.

The landlord also seeks compensation for the cost of repairs to damage on walls in the entry and the hallway/stairwell. In support the landlord provided photographs of the subject area and an invoice for the costs. The tenants attribute this damage to reasonable wear and tear.

The landlord seeks compensation for the cost of carpet cleaning as the tenants have provided no evidence that they had the carpets professionally cleaned. The landlord relies on Clause 20 of the tenancy agreement for these charges and has provided photographic evidence of the carpets and invoices. I note the CIR does not record any condition problems with the carpet but does state: "Carpet not cleaned. Unit not professional cleaned."

The landlord also seeks compensation for liquidated damages in the amount of one-half month's rent. The landlord stipulated that the amount of liquidated damages would vary

depending on the amount of rent that was charged and that it is used to offset the costs of finding a replacement tenant.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* stipulates that 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, and
- b) Give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I am satisfied that the landlord has established through her Condition Inspection Report that there were two bulbs not working at the end of the tenancy. I am also satisfied that the tenant's agreed, when they signed the tenancy agreement, to the charge of \$25.00 per lightbulb for replacements. As a result, I order the landlord is entitled to \$50.00 for replacement lightbulbs.

I also am satisfied that the landlord has established that there was damage to the walls of the entry and stairwell that goes beyond reasonable wear and tear for a tenancy of 7 months. I accept the costs of \$290.00 identified in the landlord's invoice as reasonable and warranted based on the photographic evidence.

As to the landlord's claim for carpet cleaning, I do not see, from the Condition Inspection Report or photographic evidence that the carpets required cleaning. Further, Residential Tenancy Policy Guideline 1 states the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. The Guideline goes on to say that: "generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

While I recognize that Clause 20 of the tenancy agreement requires the tenants have the carpets professionally cleaned "at the end of a tenancy and annually" the clause includes a requirement for the landlord to have requested that the tenants do so. The landlord has provided no evidence that such a request was made to the tenants.

As such, I concur with the requirements set forth in Policy Guideline 1 that would require cleaning after a tenancy for one year. As this tenancy was only 7 months in duration and there is no evidence that the carpets were dirty at all, I find the landlord has failed to establish entitlement to compensation for professional carpet cleaning and I dismiss this part of their claim.

Residential Tenancy Policy Guideline 4 states that:

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.

I note that Clause 37 of the tenancy agreement stipulates that liquidated damages are noted as being equal to ½ month's rent. During the hearing I noted that the tenancy agreement had originally identified that rent was to be \$2,600.00 but that it was crossed out and replaced with \$2,500.00 (initialled by both tenants and the landlord's agent).

As such, I asked the landlord if that meant that if the rent had been \$2,600.00 that her claim for liquidated damages would have been for \$1,300.00. Her response was that the \$2,600.00 was a mistake and that it never should have read \$2,600.00. So, I tried to make the question more general and she eventually clarified that yes if the rent was different, the amount of the liquidated damages clause would be different, regardless of the costs to re-rent the unit or the losses the landlord would have suffered.

As such, I find that liquidated damages clause in this tenancy agreement is a penalty and not a genuine pre-estimate of the loss the landlord would suffer if she had to re-rent the rental unit before the end of the fixed term. Therefore, I find the landlord is not entitled to any amount for liquidated damages. I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$365.00** comprised of \$50.00 light bulb replacement; \$290.00 wall repairs and \$25.00 of the \$100.00 filing fee paid by the landlord for this application as she was largely unsuccessful in her claim.

I order the landlord may deduct this amount from the security deposit of \$1,250.00 held in satisfaction of this claim. I grant a monetary order to the tenants in the amount of **\$885.00 for return of the balance of the security deposit**. This order must be served

on the landlord. If the landlord fails to comply with this order the landlord 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: January 18, 2022

Residential Tenancy Branch