



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

This hearing was convened as a result of the Landlords' application under the *Residential Tenancy Act* (the "Act") for:

- a monetary order for \$650.00 for compensation for monetary loss or other money owed by the Tenant pursuant to section 67;
- authorization to keep the Tenant's security deposit under section 38; and
- authorization to recover the Landlords' filing fee for this application from the Tenant pursuant to section 72.

The Landlords' agent ("DC") and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

DC testified the Landlords served the Tenant with the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") by registered mail on September 20, 2021. DC submitted a Canada Post receipt and tracking number for the posting the NDRP Package to the Tenant. I find the Landlords served the NDRP Package in accordance with section 89. Pursuant to section 90 of the Act, I find the Tenant was deemed to have received the NDRP Package on September 25, 2021.

DC stated the Landlords did not receive any evidence from the Tenant for this proceeding.

Issues to be Decided

Are the Landlords entitled to:

- a monetary order for \$650.00 for compensation for monetary loss or other money owed by the Tenant?
- authorization to keep the Tenant's security deposit?
- recover the Landlords' filing fee for this application from the Tenant?

Background and Evidence

DC and the Tenant agreed the tenancy commenced on October 1, 2020, for a fixed term ending September 30, 2021, with rent of \$2,400.00 payable on the 1st day of each month. DC stated the Tenant paid a security deposit of \$1,200.00 which the Landlords are holding in trust for the Tenant.

DC and the Tenant agreed the Tenant vacated the rental unit on August 31, 2021, being one month before the fixed term of the tenancy was to end on September 30, 2021. DC referred to paragraph 6 of the tenancy agreement which states:

6. 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 \$2,400.00 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 losses that will remain unliquidated.

DC stated that, although the Landlords were entitled to \$2,400.00 for liquidated damages, the Landlords were only seeking liquidated damages \$650.00, \$20.00 of which was to offset the cost of performing a credit bureau search of a prospective replacement tenant for the rental unit.

The Tenant disputed the amount claimed by the Landlords for damages. The Tenant stated that, when he moved in, the rental unit required significant work. The Tenant stated the Landlords agreed that he could move into the rental unit early so that he could repair and paint the walls and that he would be reimbursed for the paint. The Tenant stated he spent \$1,376.00 to repair the unit for which he has not been reimbursed by the Landlords. The Tenant also objected to the amount claimed by the Landlords because he had found a replacement tenant and had thereby reduced the time and expense the Landlords would have incurred to find a replacement tenant.

DC stated the Landlords had taken into account Tenant was ending the tenancy only one month prior to the end of the fixed term of the tenancy and the Tenant finding a replacement tenant for the rental unit. DC stated that, as a result of those considerations, the Landlords were only seeking \$650.00 rather than \$1,100.00 the Landlords were otherwise entitled to pursuant to the liquidated damages clause in the tenancy agreement.

Analysis

The Landlords claimed liquidated damages of \$650.00 from the Tenant because of the Tenant vacating the rental unit one month before the end of the fixed term of the tenancy. *Residential Tenancy Policy Guideline 4* ("PG 4") provides guidance on situations where a party seeks to enforce a clause in a tenancy agreement providing for payment of liquidated damages. PG 4 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 Landlords have invoked the liquidated damage clause in the tenancy agreement. However, instead of claiming the full of \$1,100.00 provided for in the tenancy agreement for liquidated damages, the Landlords are only claiming \$650.00. I find that by so doing, the Landlords have fixed the amount of damages to which they are entitled at \$650.00. The Tenant has claimed the amount claimed by the Landlords is too much considering there was only one month left to the fixed term of the tenancy and the work he performed on the rental unit. However, I find the liquidated damages clause in the tenancy agreement to be reasonable and I find it to be valid. As stated in PG 4, the Tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Based on the above, I award the Landlords \$650.00 pursuant to section 67 of the Act.

As the Landlords have been successful in their application, I order that the Tenant pay the Landlords \$100.00 to reimburse them for their filing fee pursuant to section 72 of the Act.

I order that pursuant to section 72(2)(b) of the Act, the Landlords may deduct the \$650.00 for the liquidated damages and the \$100.00 filing fee from the Tenant's security deposit of \$1,100.00. The Tenant is entitled to the return of the balance of his security deposit from the Landlords and, pursuant to section 62(3) of the Act, I grant the Tenant a monetary order in the amount of \$350.00.

If the Tenant believes that he is entitled to reimbursement or other compensation relating to the work he performed on the rental unit during the tenancy, then he has the option of making an application for dispute resolution to make a claim for compensation from the Landlords.

Conclusion

The Landlords are awarded \$650.00 from the Tenant for damages for breach of the fixed term tenancy agreement.

The Landlords are awarded the \$100.00 filing fee of their application.

The Tenant is granted a Monetary Order for \$350.00 representing the balance of the security deposit, after deducting the damages and filing fee for the Landlords, calculated as follows:

Item	Amount
Liquidated Damages Awarded Landlords	\$650.00
Landlords' Filing Fee	\$100.00
Less Tenant's Security Deposit	-\$1,100.00
Total Monetary Order for Tenant	-\$350.00

The Tenant must serve the Monetary Order on the Landlords as soon as possible. Should the Landlords 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.

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: March 22, 2022

Residential Tenancy Branch