



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INLET VIEW APARTMENTS C/O BAYSIDE PROPERTY
SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDCL-S, MNRL-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 unpaid rent, and compensation 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 1:41 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlord's agent, KO ("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's agent and I were the only ones who had called into this teleconference.

The landlord's agent was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. The landlord's agent confirmed that they understood.

At the outset of the hearing, the name of the landlord was clarified as a portion of the company name was cut off. The landlord's application was amended to reflect the proper name of the landlord.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ('Application') and evidence on package on December 20, 2021 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 December 25, 2021, 5 days after mailing. Although the tenant did provide evidence for the hearing, the landlord testified that they were not served with this evidence. As the tenant was required to serve the landlord with their evidentiary materials, and in the absence of evidence to support that this package was served on the landlord, the tenant's evidentiary materials were excluded for the purposes of 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 tenants?

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 February 1, 2021 and was to end on January 31, 2022. The tenancy ended on or about November 30, 2021 after the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on October 26, 2021. Monthly rent was set at \$1,500.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$750.00, which they still hold.

The landlord is seeking the following monetary claims for unpaid rent, NSF fees, late fees, and liquidated damages as set out in the tenancy agreement. The landlord's agent confirmed in the hearing that the outstanding rent is \$4,500.00, and not \$4,550.00 as stated on the monetary order worksheet.

Item	Amount
Unpaid Rent (June 2021-November 2021)	\$4,500.00
Liquidated Damages	750.00
NSF Fees	200.00
Late Fees	50.00
Filing Fee	100.00
Total Monetary Order Requested	\$5,600.00

The landlord testified that the fixed-term tenancy was terminated before the end of the term as the tenant failed to pay the outstanding rent, and moved out instead.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;...

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 this tenancy in a manner required by the *Act*.

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...

The landlord drafted the agreement calling for payment of \$750.00 as liquidated damages in the event that the tenant ends the tenancy before the end of the fixed term. The amount claimed in an agreement as liquidated damages is intended to be an estimate of the loss that may be suffered by the landlord if the tenant breaches the agreement by ending the tenancy early. I am satisfied that the landlord is entitled to a monetary award of \$750.00. I do so as I find this to be a reasonable estimate of the landlord's loss in the event of a breach to cover change over costs, such as advertising, interviewing, administration, re-renting of the rental unit due to the early termination of this tenancy.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the tenant was obligated to pay the rent as per the tenancy agreement and the Act. I find the landlord provided undisputed evidence to support that the tenant failed

to pay the outstanding rent, nor did they have an order from an Arbitrator allowing them to deduct all or a portion of the rent, nor do I find that the tenant had a right under the Act to deduct or withhold all or portion of the rent. Accordingly, I find that the landlord is entitled to \$4,500 in outstanding rent. I also find that the landlord provided sufficient evidence to support that the tenant owes \$200.00 in NSF fees as well as \$50.00 in late fees that remain unpaid by the tenant. Accordingly, I allow the landlord a monetary order for this money owed.

I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security and pet damage deposit of \$750.00 each deposit. In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to retain the deposit in partial satisfaction of the monetary awards.

Conclusion

I issue a Monetary Order in the amount of \$4,850.00 in the landlord's favour under the following terms.

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.

Item	Amount
Unpaid Rent (June 2021-November 2021)	\$4,500.00
Liquidated Damages	750.00
NSF Fees	200.00
Late Fees	50.00
Filing Fee	100.00
Less Deposit Held	-750.00
Total Monetary Order	\$4,850.00

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: July 20, 2022