



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY GROUP LANDS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On December 17, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.C. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 19-minute teleconference. At the outset of the hearing, I informed S.C. that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

She advised that the Notice of Hearing and evidence package was served to the Tenant by email on December 23, 2021. She testified that she served this package to the email address noted on the Address for Service form that was submitted as documentary evidence. However, while the Tenant consented to allow for service of documents by email, the Landlord did not include the Tenant’s email address for service on this form.

She submitted that the Tenant replied twice by email, on December 23, 2021, to the Landlord’s email containing the Notice of Hearing and evidence package. While these replies were not submitted as documentary evidence, she read verbatim from these emails. Despite S.C. not providing a form containing the specific email address that the Tenant consented to use for service of documents, and despite her not submitting documentary evidence of the responses from the Tenant, I am satisfied from S.C.’s solemnly affirmed testimony that the Tenant was sufficiently served this package on

December 23, 2021. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.C. advised that the tenancy was supposed to start on January 1, 2022, as a fixed term tenancy of one year. However, the Tenant texted the Landlord on December 10, 2021, stating that she would not be moving into the rental unit. Rent was established at \$1,495.00 per month and was due on the first day of each month. A security deposit of \$747.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

As well, she stated that the Tenant never provided a forwarding address in writing.

S.C. advised that the Landlord is seeking compensation in the amount of **\$747.50** because the Tenant ended the fixed term tenancy early, and there was a liquidated damages clause in the tenancy agreement.

S.C. stated that this amount represents the Landlord's costs incurred of the staff time required to show the rental unit, to complete administrative tasks related to re-renting the property, and to show the rental unit. She submitted that the rental unit was

advertised, as available on December 11, 2021, online and on the Landlord's own internal website. She indicated that there were eight showings of the rental unit, and it was eventually re-rented for January 1, 2022.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, given that a forwarding address was never provided, I am satisfied that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$747.50 for the cost of liquidated damages, there is no dispute that the parties entered into a fixed term tenancy agreement from January 1, 2022, for a period of one year. Yet, the tenancy effectively ended when the Tenant did not move into the rental unit.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, the Landlord must make reasonable efforts to re-rent the rental unit. As well, 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" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- 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.

Based on the undisputed evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to.

Furthermore, based primarily on the solemnly affirmed testimony of S.C., I am also satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and re-rent the unit as quickly as possible. In addition, I find that this amount being sought was a genuine pre-estimate of this loss. Consequently, I grant the Landlord a monetary award in the amount of **\$747.50** to satisfy this issue.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of

Section 72 of the *Act*, I allow the Landlord to retain the security deposit in satisfaction of this claim.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Liquidated damages	\$747.50
Recovery of filing fee	\$100.00
Security deposit	-\$747.50
Total Monetary Award	\$100.00

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenant must be served with **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.

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 25, 2022

Residential Tenancy Branch