Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURION PROPERTY ASSOCIATES INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord February 14, 2022 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

A.H. appeared at the hearing as agent for the Landlord with H.F., Counsel for the Landlord. The Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). A.H. and the Tenants provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenants confirmed receipt of the hearing package and Landlord's evidence and confirmed there are no service issues.

A.H. and H.F. advised that the Landlord did not receive the Tenant's evidence. The Tenants advised they did not serve their evidence on the Landlord. I found the Tenants failed to comply with rule 3.15 of the Rules. I heard the parties on whether the Tenants' evidence should be admitted or excluded. Pursuant to rule 3.17 of the Rules, I

excluded the Tenants' evidence as I found it would be unfair to admit it when A.H. and H.F. had not received it and could not respond to it at the hearing.

At the outset of the hearing, A.H. and H.F. advised that the pet damage deposit had been returned to the Tenants and the Landlord is only seeking to keep the security deposit. The Tenants acknowledged receiving a refund from the Landlord March 11, 2022, and said they did not know what this was for. The Tenants confirmed the refund was in the amount of the pet damage deposit. I found the Landlord had returned the pet damage deposit.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Liquidated damages	$1,995.00
2	Cleaning	$84.00
3	Filing fee	$100.00
	TOTAL	**$2,179.00**

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 15, 2021, and was for a fixed term ending June 30, 2022. Rent was $1,995.00 per month due on the first day of each month. The Tenants paid a $997.50 security deposit and $997.50 pet damage deposit. The agreement has an addendum.

A.H. and H.F. advised that the tenancy ended January 31, 2022. The Tenants testified that they vacated the rental unit January 28, 2022, and did a move-out inspection January 29, 2022.

The parties agreed the Tenants provided their forwarding address to the Landlord on the move-out Condition Inspection Report ("CIR").

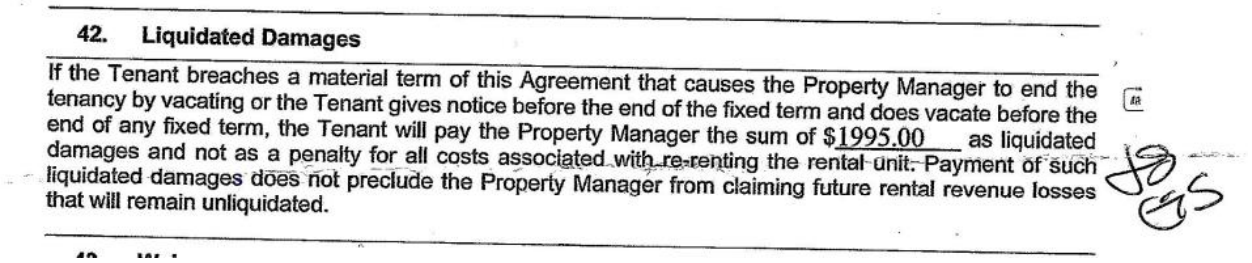
The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The parties agreed that the Tenants agreed on the CIR to the Landlord keeping $84.00 of the security deposit for cleaning.

The parties agreed on the following. The parties did a move-in inspection June 22, 2021, and the CIR was completed and signed by both parties. The parties did a move-out inspection January 29, 2022, and the CIR was completed and signed by both parties.

#1 Liquidated damages $1,995.00

Term 42 in the addendum to the tenancy agreement states:



42. Liquidated Damages

If the Tenant breaches a material term of this Agreement that causes the Property Manager to end the tenancy by vacating or the Tenant gives notice before the end of the fixed term and does vacate before the end of any fixed term, the Tenant will pay the Property Manager the sum of $1995.00 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 Property Manager from claiming future rental revenue losses that will remain unliquidated.

The Landlord sought to enforce the liquidated damages clause at term 42 in the addendum to the tenancy agreement. A.H. and H.F. advised that the Tenants ended the tenancy early due to an incident with their dog and another tenant. A.H. and H.F. advised that they are seeking the liquidated damages amount in part due to the extra work and hours spent to re-rent the unit.

The Tenants acknowledged they ended the tenancy early. The Tenants testified that they only ended the tenancy after the Landlord provided them with a letter stating they had to remove their dog from the rental unit or the Landlord would evict the Tenants.

The Tenants advised that they never provided a breach letter to the Landlord. The Tenants submitted that they had no choice but to end the tenancy and that they gave proper notice. The Tenants denied that the incident with their dog and another tenant happened as alleged. The Tenants testified that the Landlord re-rented the unit for February and so there was no loss.

#2 Cleaning $84.00

The Tenants agreed to the Landlord keeping $84.00 for cleaning on the CIR and at the hearing.

Pet damage deposit

At the end of the hearing, the Tenants said they are seeking return of double the pet damage deposit.

Neither A.H. nor H.F. knew what date the pet damage deposit refund was sent to the Tenants. A.H. acknowledged the Landlord was not seeking compensation for pet related damage in the Application.

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Pursuant to RTB Policy Guideline 17, I have considered whether the Tenants are entitled to return of the security and pet damage deposits, or double these, on the Application because the Tenants were not required to file their own Application for Dispute Resolution seeking return, or return of double, these.

Based on the testimony of both parties, I accept that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for liquidated damages and cleaning, neither of which are damage.

I find the tenancy ended for the purposes of section 38(1) of the *Act* on the move-out inspection date of January 29, 2022.

Based on the testimony of the parties, I find the Tenants provided their forwarding address to the Landlord on the move-out CIR on January 29, 2022.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them. The Application was filed February 14, 2022. I find the Landlord filed the Application in time because the 15th day fell on a Sunday when the RTB office was closed and therefore the Landlord had until the following Monday, February 14, 2022, to file the Application. I find the Landlord complied with section 38(1) of the *Act* in relation to timing.

However, Policy Guideline 31 addresses pet damage deposits and states:

> The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet.** The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

The Landlord did not seek compensation for pet related damage in the Application and therefore the Landlord had to return the pet damage deposit to the Tenants by February 14, 2022. Neither A.H. nor H.F. knew what date the pet damage deposit was sent to the Tenants. Based on the testimony of the Tenants, I accept they received the pet damage deposit March 11, 2022. In the absence of further evidence, I am not satisfied the pet damage deposit was sent to the Tenants by February 14, 2022, because I find it unlikely that it would take almost a month for the Tenants to receive the pet damage deposit after it was sent. I find the Landlord failed to return the pet damage deposit as required and therefore failed to comply with section 38(1) of the *Act*. Given this, and pursuant to section 38(6) of the *Act*, the Landlord must return double the pet damage deposit to the Tenants. Given the Landlord has returned the original amount of the pet

damage deposit, at this point the Landlord must return a further $997.50 to the Tenants. No interest is owed on the pet damage deposit because the amount of interest owed has been 0% since 2009.

#1 Liquidated damages $1,995.00

RTB Policy Guideline 04 deals with liquidated damages and 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 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.

Based on the written tenancy agreement, I find the Tenants were bound by term 42 of the addendum.

Based on the admission of the Tenants, I find they ended the tenancy prior to the end of the fixed term. I do not accept that the Tenants had no choice but to end the tenancy. The Tenants could have chosen not to end the tenancy and let the Landlord end the tenancy if that is what the Landlord wished to do. Pursuant to section 45 of the *Act*, the Tenants were not permitted to end the tenancy prior to the end of the fixed term without

providing the Landlord a breach letter, which the Tenants acknowledged they did not do. In the circumstances, the Tenants breached the tenancy agreement and section 45 of the *Act* by ending the tenancy prior to the end of the fixed term.

I find term 42 of the addendum applies because it states that the Tenants will pay $1,995.00 if "the Tenant gives notice before the end of the fixed term and does vacate before the end of any fixed term". The Tenants did both of these things which triggered section 42 of the addendum.

I accept that the liquidated damages of $1,995.00 are for the cost of re-renting the unit and are not a penalty based on the wording of term 42 itself as well as the statements of A.H. and H.F.

It is not relevant whether the Landlord re-rented the unit for February. The Landlord is not claiming for loss of rent. The Landlord is seeking the liquidated damages amount set out in term 42 of the addendum for the cost of re-renting the unit. The Landlord was entitled to include this clause in the tenancy agreement and the Tenants agreed to this clause when they signed the tenancy agreement. The Landlord does not need to prove rental loss.

Based on the written tenancy agreement, I am satisfied the liquidated damages clause was a genuine pre-estimate of the loss associated with the Tenants ending the tenancy early at the time the tenancy agreement was entered into. I do not find the amount sought extravagant in relation to the loss associated with having to re-rent the unit. Nor do I find the amount oppressive. In coming to these conclusions, I have considered that the amount sought is equal to one month's rent and not more.

I am satisfied the liquidated damages clause is not a penalty and is enforceable. I am satisfied it applies here and that the Tenants are bound by it. I am satisfied the Landlord is entitled to $1,995.00 for liquidated damages.

#2 Cleaning $84.00

The Tenants agreed to the Landlord keeping $84.00 for cleaning and therefore the Landlord is awarded this amount.

#3 Filing fee $100.00

Given the Landlord has been partially successful in the Application, I award the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Liquidated damages	$1,995.00
2	Cleaning	$84.00
3	Filing fee	$100.00
	TOTAL	**$2,179.00**

At this point, and given the above decision about the pet damage deposit, the Landlord is considered to hold $1,995.00 being the security deposit and the doubled portion of the pet damage deposit. Pursuant to section 72(2) of the *Act*, the Landlord can keep the $1,995.00 and is issued a Monetary Order for the remaining $184.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to $2,179.00. The Landlord can keep the $1,995.00 they are considered to hold. The Landlord is issued a Monetary Order for the remaining $184.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: October 12, 2022

Residential Tenancy Branch