



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NVISION PROPERTY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on October 18, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38

The Landlord attended the hearing and provided affirmed testimony. However, the Tenant did not. The Landlord stated that he sent the Notice of Dispute Resolution Proceeding and evidence to the Tenant's forwarding address by registered mail on March 8, 2022. I accept the affirmed testimony on this matter, and pursuant to section 89 and 90 of the Act, I deem this package was served to the Tenant 5 days after it was mailed.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. 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 compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

The tenancy agreement provided into evidence shows that monthly rent was \$1,580.00, and was due on the first of the month. The tenancy agreement started on April 28, 2021, and was for a fixed term until April 30, 2022. The Landlord stated that they collected a security deposit in the amount of \$790.00 as well as a pet deposit of \$400.00.

The Landlord is seeking \$1,00.00 in this application because the Tenant signed and agreed to the following term in the tenancy agreement:

1. **Liquidated Damages:** If the Tenant gives notice before the end of the fixed term and does vacate before the end of any fixed term OR if the tenant breaches a material term of this Agreement that causes the Landlord to end the tenancy by vacating, the Tenant will pay to the Landlord the sum of \$1,000.00 as liquidated damages and not as a penalty towards all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the Landlord from claiming future rental revenue losses that will remain unliquidated.

The Landlord stated that the Tenant provided written notice at the end of January 2022, that she would be moving out at the end of February 2022. The Landlord stated that the Tenant moved out around February 22, 2022, and as a result of her leaving before the end of her lease, the Landlord had to incur several additional costs to re-rent the unit, including paying for movers (at the start of all tenancies due to small hallways in the building) and labour costs.

The Landlord stated that following the end of the tenancy, they returned \$390.00 of the \$1,390.00 they held for deposits. At this point the Landlord is only seeking permission to retain the remaining \$1,000.00 they currently hold in deposits.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Residential Tenancy Policy Guideline 4 provides for liquidated damages as follows:

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.

In this case, I find that the liquidated damages clause in the tenancy agreement is an enforceable term, as it is not extravagant compared to what rental losses could have been incurred following premature termination of the agreement. I find the amount is not punitive, such that the clause is not enforceable. This term was agreed to up front under the addendum. I award the full amount of this item, \$1,000.00.

Also, pursuant to sections 72 of the Act, I authorize that the remaining security and pet deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Liquidated damages	\$1,000.00
Less: Security and pet Deposit currently held by Landlord	(\$1,000.00)
TOTAL:	\$0

Conclusion

The Landlord is granted a permission to retain the remaining deposits of \$1,000.00.

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: October 21, 2022

Residential Tenancy Branch