



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI PROPERTY MANAGEMENT
SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:56 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by agents KT (the landlord) and NT, attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the landlord's testimony that the tenant was served with the application by registered mail on February 23, 2022 and the evidence on September 12, 2022, in accordance with section 89(1)(c) of the Act. The landlord affirmed he mailed both packages to the tenant's forwarding address. The tracking number and the forwarding address are recorded on the cover page of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail, the tenant is deemed to have received the notice of hearing on February 28, 2022 and the evidence on September 17, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the parties entered into a fixed-term tenancy from August 01, 2021 to July 31, 2022. The tenant vacated the rental unit on January 31, 2022. Monthly rent of \$1,388.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$694.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states:

Liquidated Damages: Without prejudice to any other remedies available to the Landlord, if the Tenant ends the fixed term tenancy prior to the end of the fixed term, or is in breach of the Residential Tenancy Act or a material term of the Tenancy Agreement that causes the Landlord to end the tenancy prior to the end of the fixed term, or any subsequent fixed term, the Tenant will pay to the landlord the sum of \$694.00 as liquidated damages. Such liquidated damages are an agreed pre-estimate of the Landlord's cost of re-renting the Premises and must be paid in addition to any other amounts owed by the Tenant to the Landlord. Tenant will also be responsible for any monthly rent for any months remaining on the fixed term, until the Premises are re-rented. Landlord will take all reasonable steps to ensure the Premises are re-rented as soon as possible in order to mitigate any damages for breach of the Tenancy Agreement by the Tenant.

The landlord submitted a copy of the condition inspection report (the report) into evidence. Both parties signed the report when the tenancy started. The landlord stated the tenant attended the move out inspection on January 31, 2022, wrote the forwarding address on the report and refused to sign it.

The landlord is claiming \$694.00 for liquidated damages, as the tenant vacated before the end of the fixed-term tenancy.

The landlord is claiming \$150.00 for cleaning expenses, as the tenant did not clean the 1 bedroom, 650 square foot rental unit when the tenancy ended. The landlord submitted an invoice indicating the landlord paid \$168.00 for 4 hours of cleaning at \$40.00 per hour on January 31, 2022.

The report indicates that when the tenancy ended the rental unit's floor, walls and trims were not clean.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Liquidated Damages

I accept the landlord's convincing uncontested testimony that the tenant moved out on January 31, 2022. I find the tenancy ended on January 31, 2022, per section 44(1)(d) of the Act.

The tenancy agreement provides for liquidated damages of \$694.00 if the tenant ends the tenancy before the end of the fixed-term.

Residential Tenancy Policy Guideline #4 states the following about liquidated damages:

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.

(emphasis added)

In this matter, I find that \$694.00 is a reasonable pre-estimate of the cost of re-renting the property and I do not find that this provision is a penalty. Accordingly, I find that the liquidated damages clause is valid.

The tenant ended the tenancy early. Accordingly, I award the landlord \$694.00 in liquidated damages.

Cleaning expenses

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the landlord's convincing undisputed testimony, the report and the invoice, I find the tenant failed to comply with section 37(2) of the Act by not reasonably cleaning the rental unit and the landlord incurred a loss of \$168.00 for four hours of cleaning at the hourly rate of \$40.00.

The landlord applied for \$150.00. As such, I award the landlord \$150.00.

Filing fee and deposit

As the landlord was successful, I award the recovery of the filing fee paid for this application in the amount of \$100.00.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the

monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. I order the landlord to retain the deposit of \$694.00 in partial satisfaction of the monetary award.

In summary, the landlord is entitled to:

Expenses	\$
Liquidated damages	694.00
Cleaning expenses	150.00
Filing fee	100.00
Subtotal	944.00
Minus deposit	694.00
Total	250.00

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$694.00 deposit and grant the landlord a monetary order in the amount of \$250.00.

The landlord is provided with this order 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: October 05, 2022

Residential Tenancy Branch