Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant KM attended the hearing and was assisted by her agent/father, JM. JM also acknowledged being agent for the tenant BM. The landlord was represented by property manager, PL (the "landlord"). As all parties were present, service of documents was confirmed. The tenant KM acknowledged service, and JM also acknowledged service of the Notice of Dispute Resolution Hearing package on behalf of the tenant BM. The landlord acknowledged service of the tenant's evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided
Is the landlord entitled to a monetary order?
Can the landlord recover the filing fee?

Can the landlord retain the tenants' security deposit?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on December 12, 2021, set to end on December 31, 2022. Rent was set at $1,925.00 per month and both a security deposit of $962.50 and a pet damage deposit of $962.50 were collected from the tenants at the commencement of the tenancy. The landlord testified that the pet damage deposit was returned to the tenants at the end of the tenancy.

A condition inspection report was conducted when the tenancy began, and a copy was provided as evidence. The landlord testified that the tenants were not present for the move-out condition inspection report as they did not want to return to the premises.

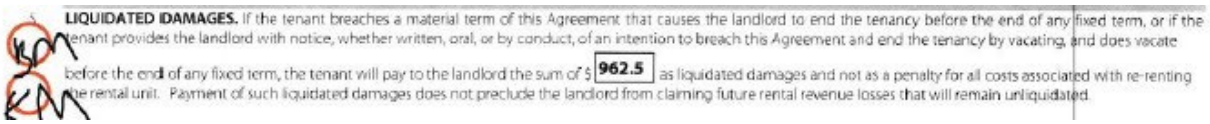
The landlord testified that the tenant ended the tenancy via email. On February 25th, the tenant advised the landlord that "*due to the apartment being unlivable with the continuing and repeated influx of bed bugs we are terminating the lease at the end of the day on February 28th, 2022".*

The tenant did not vacate the rental unit on February 28th and moved out on March 2nd instead.

The landlord submits that the tenants did not provide a month's notice of ending the tenancy, breaking the fixed term lease that was scheduled to end on December 31, 2022. The landlord testified that since the tenants didn't vacate the rental unit until March 2nd, they were unable to re-rent it for the month of March. The unit couldn't be rented for the month of April because there were problems with pest control which the landlord was taking precautions to rectify. The landlord wanted to ensure everything was resolved before moving the next tenant in.

The landlord seeks to collect the parking fee for the month of March in the amount of $100.00 as they were unable to rent out the space during that month of March while the tenants remained living in the unit.

The landlord seeks to collect $962.50 as liquidated damages because the tenants ended the tenancy before the end of the fixed term, pointing to clause 5 of the tenancy agreement which reads:



5 **LIQUIDATED DAMAGES.** If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of $ **962.5** 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 landlord from claiming future rental revenue losses that will remain unliquidated.

Lastly, the landlord seeks to recover the cost of cleaning the unit ($180.00), cleaning the drapes ($75.00) and for patching and painting the unit after the tenants left ($150.00).

The tenants' agent JM gave the following testimony. The named tenant BM is his grandson and the other named tenant is his daughter. His daughter never occupied the rental unit; it was tenanted by his grandson and a roommate not named in this action. The tenancy began in mid-December and in January the tenants discovered bedbugs the following month. On January 26th, the tenants sent a photo of a live bedbug they caught and asked the landlord to take care of it. The tenants were hopeful that the landlord would take care of it since they liked the building and the unit.

The unit adjacent to them was occupied by what the agent describes as a "hoarder". The landlord's evidence shows that this was the source of the infestation being very cluttered and a high activity of bedbugs. Since the tenants' unit was adjacent to the source, the bedbugs had spread to their unit. The landlord began treatment of the building right away and the pest control's report of February 17th indicated that following the treatment the day prior, there was no activity in the tenant's unit upon inspection. Relying on the report, the tenant and his roommate returned on February 22nd.

That night, both the tenant and his roommate were bitten several times. It interfered with their sleep and photos of the bites taken between February 24th and 27th were submitted as evidence. The tenants also provided a written statement from the occupant of the unit directly below theirs. According to this letter, despite 4 chemical treatments, the building still has bedbug issues. Another treatment is upcoming on March 15th and there is no end in sight. She's had to seal off her bathroom fan and pot lights to prevent live bedbugs falling onto her head from the unit above hers.

The tenant understands he ended the tenancy early but he disputes forfeiting his security deposit. It was a health emergency to get out of the building. It was impossible to continue living there. The problem continued to get worse, as the tenant and his roommate got even more bites after the initial pest control treatment failed.

The tenant acknowledges staying in the unit until the 2nd of March, as he was unable to vacate it before the end of February. Despite this, the tenant does not feel paying rent for the months of March and April are justified. The reason the rental unit remained vacant is because of the ongoing issue of bedbugs which couldn't be eradicated. It is unreasonable the tenant should be expected to remain living in such conditions.

The tenant acknowledges the cleaning fees, drape cleaning fees and the charges for patching and painting the unit.

Analysis

The tenant did not dispute the landlord's claims for cleaning the unit ($180.00), cleaning the drapes ($75.00) and for patching and painting the unit after the tenants left ($150.00). Pursuant to section 67 of the Act, I award the landlord the sum of **$405.00** for these expenses claimed.

The landlord seeks a half month's rent pursuant to clause 5 of the lease as liquidated damages. Residential Tenancy Branch Policy Guideline PG-4 was written to assist landlords and tenant understand the issues relevant with respect to 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. 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.

In the matter before me, the clause is clearly outlined and the tenant's initials appear next to it. The tenant vacated the rental unit before the end of fixed term and contractually agreed to pay the landlord $962.50 as the cost associated with re-renting the rental unit. I find no indication that this clause is a penalty. While the pre-agreed cost of re-renting the unit equals a half month's rent, the clause does not specify that

the tenant's security deposit be forfeited for ending the fixed term tenancy early. I award the landlord **$962.50** as the agreed-to cost of re-renting the unit pursuant to section 67 of the Act.

Section 45(2) governs a tenant's notice to end a fixed term tenancy:

(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.

(3)If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, pursuant to section 45(3), the tenant could have given the landlord a written notice of their failure to provide a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and given them a reasonable period to correct it. Once the period passed without being rectified, the tenant could have ended the fixed term tenancy in accordance with section 45(3).

Instead, the tenant unilaterally ended the tenancy without going through the steps outlined in section 45(3). While I accept that the tenant felt his health was at risk, the Act requires that the tenant notify the landlord of their duties under the Act and that he would exercise his right to end the tenancy before the end of the fixed term if they don't comply.

Further, the tenant only gave 3 days notice of his intention to end the fixed term tenancy on February 28th and didn't vacate the rental unit until the 2nd of March. Not only did this deny the landlord the ability to begin marketing the unit for rent if they intended on renting it immediately but continuing to occupy it after the proposed end date would have made re-renting it for the 1st of March impossible. Where a tenant vacates or abandons the premises before a tenancy agreement has ended, the tenant must compensate the landlord for the damage or loss that results from their failure to comply with the legislation and tenancy agreement pursuant to section 7 of the Act. I find the landlord is entitled to be compensated for the loss of rent for the month of March 2022, in the amount of **$1,925.00.**

The tenant signed a Parking stall agreement that was introduced into evidence by the landlord. In the agreement the tenants acknowledged that a "*Notice ot terminate this agreement shall be by advance written notice issued to [landlord] 30 days or 1 calendar month prior to cancellation month".* The tenant ended the tenancy with less than 30 days notice to the landlord and effectively ended the parking stall agreement simultaneously. In accordance with section 7(1)(g) of the Residential Tenancy Regulations, I find the tenant breached the parking agreement and consequently is responsible for compensating the landlord with the equivalent of one month's parking fee of **$100.00.**

The landlord seeks to collect rent for the month of April, 2022 but acknowledged that they could not rent it while the unit still had bedbug issues. While the landlord could have sought to collect rent until the earliest time the tenant could have legally ended the rental unit (December, 2022), they only sought April's rent. I find the circumstances in this case are unusual in that the unit was not capable of being rented while the issues with the bedbugs from the adjacent unit was still active. From the landlord's evidence, it is clear that the bedbug issue arose from the occupant of the adjacent unit, making the tenant's unit un-rentable for the month of April through no fault of the tenant. Consequently, I find the tenant should not be responsible for financially compensating the landlord for the month of April while the landlord was working on making the unit suitable for occupation by the next tenant. I dismiss this portion of the landlord's claim.

The landlord was successful in the majority of their claim. The filing fee of $100.00 will be recovered.

In accordance with the offsetting provision of section 72, the landlord may retain the tenant's security deposit of $962.50 in partial satisfaction of the monetary order.

Item	**amount**
cleaning the unit and drapes; painting	$405.00
Liquidated damages to re-rent unit	$962.50
March 2022 rent	$1,925.00
March 2022 parking fee	$100.00
Filing fee	$100.00
Less security deposit	($962.50)
Total	**$2,530.00**

Conclusion

Pursuant to section 67, the landlord is awarded a monetary order in the amount of $2,530.00.

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: November 21, 2022

Residential Tenancy Branch