



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PETER WALL MANSION AND
ESTATE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

MG ("landlord") appeared as agent for the landlord in this hearing. While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlord testified that the tenants were served with the landlord's application for dispute resolution package and evidentiary materials by way of registered mail on May 12, 2022 to the forwarding address provided by the tenants upon move-out. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenants deemed served with the landlord's package on May 17, 2022, 5 days after mailing. The tenants did not submit any evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 20, 2022 and was to end on April 30, 2023. Monthly rent was set at \$3,800.00, payable on the first of the month. The landlord still holds a security deposit of \$1,900.00 for this tenancy.

The landlords are seeking a monetary order for the following losses associated with this tenancy.

Item	Amount
Loss of Rent for July 2020	\$1,700.00
Liquidated Damages	625.00
Unpaid rent for May & June 2020	1,700.00
Filing Fee	100.00
Total Monetary Order Requested	\$4,125.00

The landlord testified that the tenants moved out on April 30, 2022, before the end of the fixed-term tenancy. The landlord provided a copy of the written notice by the tenants informing the landlord that they were moving out.

The landlord is seeking a monetary order in the amount of \$3,800.00 for liquidated damages as set out in the tenancy agreement. The landlord is also seeking

reimbursement of the \$1,800.00 move-in incentive provided to the tenants. The landlord provided a copy of the tenancy agreement which showed that the tenants were provided a move-in incentive of \$1,800.00 plus a gift card. The tenancy agreement also states that the tenants would be required to pay \$3,800.00 if they were to terminate the lease before the end of the fixed-term.

Analysis

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (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.

I find that the tenants did not end the tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No application for dispute resolution has been filed by the tenants. The tenants moved out earlier than the date specified in the tenancy agreement.

I must now consider whether the landlord is entitled to the \$3,800.00 in liquidated damages.

Residential Tenancy Branch Policy Guideline #4 with respect to Liquidated Damages includes the following guidance with respect to the interpretation of such clauses:

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...

I have reviewed the written tenancy agreement. I am satisfied that the landlord had clearly stipulated on the tenancy agreement that the tenants would be responsible for the amount claimed by the landlord as liquidated damages. I am satisfied that the amount to be a genuine and reasonable pre-estimate of the losses associated with re-filling this vacancy in the event of an early termination of the fixed-term tenancy. Accordingly, I allow this portion of the landlord's monetary claim.

The landlord is also seeking a monetary order for reimbursement of the move-in incentive. In review of the documents submitted, I am satisfied that the tenants were provided with a move-in incentive in the amount of \$1,800.00. I find that the tenants had unilaterally terminated the lease less than 10 days after moving in, and therefore failed to fulfill their obligations under the lease agreement. Accordingly, I allow the landlord's application for reimbursement of the move-in incentive.

As the landlord was successful in their application, I am allowing the landlord to recover the filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,90000. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$3,800.00 in the landlord's favour under the following terms:

Item	Amount
Liquidated Damages	\$3,800.00
Reimbursement of move-in incentive	1,800.00
Filing Fee	100.00
Less security deposit held	-1,900.00
Total Monetary Order	\$3,800.00

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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: January 16, 2023

Residential Tenancy Branch