



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDC-S, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The landlord applied for compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit and pet damage deposit to use against a monetary award, and recovery of the cost of the filing fee.

The landlord's agent (landlord) attended the telephone conference call hearing; the tenant did not attend. The landlord was affirmed.

The landlord testified that they served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on August 19, 2022, to the address the tenant sent to the landlord by email. The landlord filed the Canada Post receipt containing the tracking number.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order for monetary compensation referred to above and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy start date of July 1, 2022, was set for a fixed-term to end on June 30, 2023, for a monthly rent of \$1,395 and a security deposit and pet damage deposit of \$697.50, each, being paid by the tenant.

The landlord continues to hold the security deposit and pet damage deposit, having made this claim against it.

The landlord's monetary claim is the following:

ITEM DESCRIPTION	CLAIMED
1. Placement, 75% of rent, lease break	\$1098.56
2. Lock change	\$113.40
3. Cleaning	\$160.00
TOTAL	\$1371.96

The landlord's additional relevant evidence included, but was not limited to, the move-in and move-out condition inspection report with photographs showing the state of the rental unit after the tenant vacated, the tenant's notice that they vacated, and invoices of costs claimed.

The landlord submitted the following:

The tenant moved out without notice. The landlord received an email on July 14, 2022, from the tenant that they moved out, which broke the terms of the fixed-term agreement. For this reason, the tenant owes the landlord the liquidated damages of 75% of a month's rent, according to the term of the tenancy agreement.

The tenant did not fully clean the rental unit and left behind personal property, which required removal. The landlord referred to their photographs filed in evidence to support the claim and an invoice to support the amount of the claim.

The tenant failed to return the keys to the rental unit, and for this reason, the landlord changed the locks. Filed in evidence was the invoice.

The tenant did not attend the hearing and they provided no evidence or submissions.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord here, has the burden of proof to substantiate their claim on a balance of probabilities.

Placement fee –

Residential Tenancy Branch Policy Guideline 4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of 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.

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 the written and signed tenancy agreement required that the tenant pay a liquidated damages fee of 75% month's rent in the event the tenant ended the fixed term tenancy prior to the end of the fixed-term. After reviewing this clause, as the tenant failed to appear to explain why the amount they agreed to was not reasonable or was oppressive, I do not find the amount is unreasonable. Therefore, I find the tenant is

responsible for paying the liquidated damages of 75%. Although the landlord claimed \$1098.56, I find 75% of the monthly rent of \$1395 is \$1046.25. I find the landlord established a monetary claim of **\$1046.25**.

Lock change –

The tenant is required to return the keys to the rental unit at the end of the tenancy, and in this case, I find the landlord submitted sufficient evidence to show the tenant did not. I find it reasonable that the landlord would change the locks. For this reason, I find the landlord established a monetary claim of **\$113.40**, for a lock change, as demonstrated by their receipt evidence.

Cleaning –

Section 37 (2) of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

As such, a tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

On the basis of the undisputed evidence before me, I find that the tenant left the rental unit in a condition that did not comply with subsection 37(2) of the Act. In particular, the tenant failed to clean the rental unit and remove all their personal property. As a result of this breach the landlord incurred the cost of cleaning and garbage removal. The landlord provided a receipt from a cleaning service to confirm the amount of their loss. I find the landlord established a monetary claim of **\$160**.

As a result, I therefore find the landlord has established a monetary claim of **\$1319.65**, as noted above.

Due to their successful application, I grant the landlord recovery of their filing fee of **\$100**.

With interest to date, the tenant's security deposit is \$702.20 and the pet damage deposit is also \$702.20.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold the tenant's security deposit and pet damage deposit of \$701.20, each, in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order of **\$15.50** in favour of the landlord as follows:

ITEM	AMOUNT
1. Liquidated damages	\$1046.25
2. Lock change	\$113.40
3. Cleaning	\$160.00
4. Filing fee	\$100.00
5. <i>Less security deposit</i>	<i>(\$702.20)</i>
6. <i>Less pet damage deposit</i>	<i>(\$702.20)</i>
TOTAL	\$15.50

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this order as soon as possible to be enforceable. 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 06, 2023

Residential Tenancy Branch