



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee paid for this application, pursuant to section 72.

Both parties appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's deposits?

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

Background and Evidence

The landlord's agent gave the following testimony. The agent testified that the tenants broke the lease and moved out earlier than the agreed date on the tenancy agreement. The tenants did not pay the utility bill for April 2022 – June 2022 in the amount of \$327.79. The agent testified that the landlord is seeking a prorated amount for the period of July 2022 as the bills are sent out every three months in the amount of \$109.26. The agent testified that the landlord seeks to recover the \$1260.00 paid for her services to find another tenant along with the \$100.00 filing fee.

RW testified that he agrees with the \$327.79 but does not agree with the \$109.26 as the landlord has not provided any proof of that billing period. RW testified that he gave the landlord 40 days notice and left on July 8, 2022 giving the landlord ample opportunity to rent the unit and that he shouldn't have to pay for an agents fee as that was the landlords choice to find new tenants in that way.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties at this hearing and the landlord's evidence submitted for this hearing.

Utility costs

The tenant acknowledges that he owes the landlord \$327.79 for utilities as they have been provided a copy of the bill. However, the tenant does not agree with the \$109.26. I

find that the landlord has provided sufficient evidence to be granted the \$327.79 but not the \$109.26 due to insufficient documentation. The landlord is entitled to \$327.79.

Liquidated Damages

I find that the landlord and tenant entered into a fixed term tenancy for the period from September 15, 2021 to September 30, 2022. Both parties signed the written tenancy agreement, and a copy was provided for this hearing. The above facts were undisputed at this hearing.

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

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.

The above provision states that tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for monetary losses to the landlord. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of the tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from a tenants' non-compliance with the Act to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for liquidated damages of \$1260.00, without leave to reapply.

Residential Tenancy Policy Guideline 4 provides information regarding 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.

I find that the cost of re-renting a unit to a new tenant is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times.

The landlord's agent referred to section 5 of the tenancy agreement addendum during this hearing. This provision states, in part, that the liquidated damages amount of 75% of one months rent as a "placement fee" for a new tenant

However, the landlord's agent did not provide sufficient documentary or testimonial evidence regarding the landlord's costs of advertisement or re-rental, as noted above.

I find that the landlords agent failed to provide sufficient documentary or testimonial evidence including copies of rent advertisements, to show if, when, or how the rental unit was advertised for re-rental, the rent amount per month, the term or length of the tenancy, how long the unit was advertised for, what details were given in the advertisement, and other such information. I find that the landlord failed to provide sufficient documentary or testimonial evidence to indicate if or how many inquiries were made for re-rental, if or how many showings were done, when any showings were done, if or how many applications were received, how many applications were accepted or rejected, and other such information.

I find that stating this information in section 5 of the tenancy agreement addendum and referring to it during this hearing, without any supporting evidence or information, is not sufficient.

Although the tenants vacated the rental unit prior to the end of the fixed term on September 30, 2022, I find that the landlord did not show how the \$1260.00 claimed for liquidated damages was a genuine pre-estimate of the loss.

For the above reasons, I dismiss the landlord's application of \$1260.00 for liquidated damages without leave to reapply.

As the landlord was partially successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord has established a claim for \$427.79. I order that the landlord retain that amount from the deposits in full satisfaction of the claim and I order that the landlord return the remaining \$1972.21 plus the \$17.31 of accrued interest to the tenant. I grant the tenant an order under section 67 for the balance due of \$1989.52. This order may be filed in the Small Claims 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: May 18, 2023

Residential Tenancy Branch