



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB OPN MND MNDC MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") to resolve a dispute regarding the end date of a fixed term tenancy; a monetary order for unpaid rent, damage and loss pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and recover the filing fee for the application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord did not provide any evidentiary submissions. The landlord confirmed receipt of the tenant's evidentiary submissions including a copy of the lease and photographs of the condition of the unit at the end of the tenancy.

Issue(s) to be Decided

Is the landlord entitled to recover a "lease break fee" as a result of the tenant vacating the unit prior to the end of a fixed term tenancy?

Is the landlord entitled to a monetary order for unpaid rent, damage and loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

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

Background and Evidence

This tenant resided in the rental unit from November 1, 2010. The landlord testified that the tenant has been required to sign a series of fixed term lease agreements to continue to reside in the rental unit. The rental amount of \$700.00 was payable on the first of each month. The landlord testified that he continues to hold the tenant's \$338.00

security deposit paid at the outset of his residence in the residential premises. The tenant testified that he ultimately vacated the rental unit/premises on December 2, 2015 returning the keys to the landlord at that time.

The landlord testified that the tenant gave notice on or before November 18, 2015 that he intended to vacate the rental unit by December 1, 2015. The landlord did not submit any materials to indicate when they began to advertise or use other methods to attempt to re-rent the unit. The landlord testified that the rental unit was re-rented on January 1, 2016. The landlord submitted that the tenant should be responsible to pay \$700.00 rent for December 2015 because of his failure to provide sufficient notice and his 2 day over-holding of the rental unit.

The landlord testified that the landlord's policies regarding rental units include; renting using successive fixed term tenancy leases to long-term tenants; professionally shampooing the carpets in each unit at the end of tenancy; charging for cleaning at the end of the tenancy; and to charge a 'lease break fee' if a tenant vacates prior to the end of a fixed term tenancy.

The landlord referred to the residential tenancy agreement ("lease") submitted by the tenant for this hearing. Section 21 of the lease is headed, "lease break" and states,

Tenants breaking this Lease Agreement remain responsible for the payment of rent and utilities for the duration of the lease. Additionally, the Tenant will be assessed the sum of Two Hundred (\$200.00) dollars as liquidated damages and not as a penalty, to cover the Landlord's administration costs of re-renting the said premises. ...

The landlord sought to recover a total of \$1035.00 from the tenant as follows,

Item	Amount
December 2015 rent	\$700.00
"Lease Break Fee"	200.00
Carpet (\$60) and Rent Unit (\$75) Cleaning	135.00
Less Tenant's Security Deposit	-338.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$797.00

Analysis

Policy Guideline No. 4 provides guidance with respect to claims by the landlord for 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.

The Policy Guideline provides a variety of considerations in determining if a liquidated damages clause is a penalty. Among the considerations is, as stated in the guideline, “[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.” This tenant provided a vacate notice prior to his move out and prior to the end of his agreed-to fixed term tenancy. Given that the tenant made the choice, aware of the lease provisions (included in each of his lease agreements signed over the prior 5 years) to end the tenancy prior to the fixed end date.

The residential tenancy agreement is clear that this tenancy was intended to continue for 6 months from November 1, 2015. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy as used in section 44 of the Act:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

A fixed term tenancy creates security for both parties to the agreement. Based on all of the evidence submitted at this hearing, the tenant breached the conditions of the residential tenancy agreement and should therefore be required to pay the lease break fee. I accept the undisputed testimony of the landlord that the tenant ended the tenancy prior to its end date without an agreement with the landlord to do so as required by the legislation. Therefore, I find that the landlord is entitled to the \$200.00 lease break fee.

With respect to the landlord’s claim to recover the December 2015 rent, I note that the tenant provided notice more than two weeks prior to the end of November 2015. I find

that the landlord did not provide sufficient evidence to prove that the landlord made efforts (through advertisements, showings or other means) to attempt to re-rent the unit for the next month. As a result of the lack of evidence from the landlord to prove that the landlord sufficiently mitigated any loss for December 2015 rent, I find that the landlord is entitled to a nominal monetary amount to reflect some loss that could be anticipated by the tenant in the circumstances. Therefore, I find the landlord is entitled to \$90.00 to compensate some rental loss as a result of the tenant's actions.

I find that the landlord has not provided proof that the carpets required cleaning, that the tenants were obliged by the tenancy agreement and the Act to complete carpet cleaning or that the landlord had out of pocket expenditures for that cleaning. As the landlord has not met the burden of proof in accordance with section 67 with respect to carpet cleaning of the tenant's rental unit, the landlord is not entitled to the \$60.00 sought for the cleaning.

The landlord also noted that they wish to recover costs for cleaning the rental unit at the end of this tenancy. The landlord submitted that the policy is to charge a \$75.00 rate for cleaning at the end of the tenancy. The tenant submitted photographic evidence to show that the rental unit was left in a very clean condition, meeting the requirements of the tenant at the end of tenancy in accordance with section 37 of the Act. Therefore, the landlord is not entitled to the \$75.00 cleaning fee.

The landlord is entitled to a monetary award as follows,

The landlord sought to recover a total of \$1035.00 from the tenant as follows,

Item	Amount
December 2015 rent	\$90.00
"Lease Break Fee"	200.00
Less Tenant's Security Deposit	-338.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$52.00

As the landlord was partly successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I allow the landlord to retain the tenant's security deposit in the amount of \$338.00.

I issue a monetary order in favour of the landlord in the amount of \$52.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 25, 2016

Residential Tenancy Branch

