



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlord and her agent, D.Y. attended the hearing. The landlord was given a full opportunity to be heard, to present affirmed testimony and to make submissions.

The landlord explained the landlord's application for dispute resolution and evidentiary package were sent to the tenant by way of Canada Post Registered Mail on May 22, 2018 and October 16, 2018. The Canada Post Registered Mail receipts were provided to the hearing. Pursuant to section 88, 89 & 90 the *Act*, the tenant is deemed served with the application for dispute and evidentiary package on May 27, 2018 and October 21, 2018 five days after their respective mailings.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

Undisputed testimony provided by the landlord and her agent explained this tenancy began on September 29, 2017 and was a fixed term tenancy set to expire on May 28, 2018. Rent was \$825.00 per month and two deposits of \$412.50 each for pet and security were collected at the outset of the tenancy and continue to be held by the landlord.

The landlord is seeking a monetary award of \$1,890.00 for loss associated with this tenancy. The landlord said the tenant vacated the property on April 28, 2018 thereby breaking the fixed term tenancy. In addition, the landlord said the tenant left the unit very dirty and it required a significant amount of cleaning following the tenant's move out.

Item	Amount
Unpaid rent for May	\$825.00
Agreed Damage	105.00
Time associated with showing of unit	85.00
Late Rent fee for May	25.00
Liquidated Damages	350.00
Dispose furniture and cleaning	500.00
Total =	1,890.00

The landlord explained two attempts were made to conduct a condition inspection of the rental unit, once on April 28, 2018 and again on May 3, 2018. The landlord said an initial attempt to meet with the tenant was unsuccessful because of a disagreement between the parties. The landlord met with the tenant's agent a second time following the initial unsuccessful meeting. The landlord said they were seeking to recover \$85.00 for the time associated with this second meeting.

The landlord described the attempts made to re-rent the suite following the tenant's departure. They said the unit was posted on "used Victoria" and "used Cowichan" and shown five times following the tenant's departure. In addition, the landlord said the tenant themselves showed the unit "numerous" times while they were still in occupation of the suite. The landlord said many people who viewed the suite complained of the odor which was present in the unit and therefore did not rent it. The landlord said the suite was left with a very disgusting smell that was described as "pet or other" and required significant and frequent cleaning following the tenant's departure. This cleaning included the use of ozonators to remedy the smell. The unit was re-rented for July 10, 2018.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

As noted above, section 7 states that when a person breaches their tenancy agreement, they must compensate the other party for this breach. I accept the landlord's undisputed testimony that *reasonable* efforts were to re-rent the unit as quickly as possible by posting it immediately on a local website, and frequently cleaning the unit. No evidence was presented at the hearing or submitted by the tenant to rebut the landlord's testimony and evidence. I will therefore award the landlord a monetary award of \$825.00 for the unpaid rent of May 2018.

The second portion of the landlord's application concerns an award of \$350.00 for liquidated damages and an application for a monetary award for miscellaneous damage and loss.

As part of their evidentiary package the landlord produced a copy of the tenancy agreement which shows that the tenant agreed to a liquidated damages clause requires payment of \$350.00, "if the tenant wishes to break the lease and leave before the expiration of the lease, the tenant agrees to pay the fair liquidated damage amount of \$350.00; This amount is to cover the time and costs it takes to find and instate a new tenant – for instance, this money will be used for such things as advertising, screening potential tenants, drawing new leases, doing tenant check-in and check-out, dealing with security deposits, office/paper work and performing other duties as required."

Residential Tenancy Policy Guideline #4 examines the issue of liquidated damages and notes, "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...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." This *Guideline* notes that a liquidated damages clause will be found to be valid if; the sum demanded is not 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, or if a single lump sum is to be paid on occurrence of several events, some trivial some serious.

After examining the landlord's application and the events which led to a violation of section 7 of the *Act*, I find that the landlord is entitled to a monetary award of \$350.00. This amount is *not extravagant in comparison to the greatest loss that could follow a breach*, it is not an amount over and above the monthly rent, and it is not contingent on a series of several events. The tenant violated the *Act* and therefore must pay the damages which have stemmed from such a breach.

The final portion of the landlord's application concerns an application for a monetary award.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the

damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

The landlord seeks a monetary award as follows:

Item	Amount
Agreed Damage	\$105.00
Time associated with showing of unit	85.00
Late Rent fee for May	25.00
Dispose furniture and cleaning	500.00
Total =	\$715.00

I accept the landlord's undisputed testimony that she suffered a loss as a result of the tenant's actions. I find the landlord's testimony to be credible and accept her description of the items left in the unit for disposal, along with the necessity to thoroughly clean the unit to remove a foul smell. I decline to award the landlord the amount sought for "time associated with the showing of unit." I find this cost is reflected in the liquidated damage charge which she was previously awarded. I therefore grant the landlord a monetary award of \$630.00 representing agreed damages, late rent fee and disposal and cleaning of the rental unit.

As the landlord was successful in her application, she may recover the filing fee pursuant to section 72 of the *Act*.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security and pet deposit in their entirety, in partial satisfaction for a return of the monetary award.

Conclusion

I issue a Monetary Order of \$1,080.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for May 2018	\$825.00
Late Fee for May 2018 rent	25.00
Liquidated Damages Fee	350.00
Agreed Damage	105.00
Dispose furniture and cleaning	500.00
Less Security Deposit	(-412.50)
Less Pet Deposit	(-412.50)

Return of Filing Fe	100.00
Total =	\$1,080.00

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. 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*.

Dated: November 6, 2018

Residential Tenancy Branch