



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

On August 3, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

B.M. attended the hearing as an agent for the Landlord; however, the Tenants did not make an appearance. All in attendance provided a solemn affirmation.

The Landlord stated he served each Tenant a Notice of Hearing package and his evidence by registered mail on August 9, 2018 (the registered mail tracking numbers are on the first page of this decision). In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing package and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation for curtain cleaning, repairs to damage, and liquidated damages?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy started on April 1, 2018 as a fixed term tenancy ending March 31, 2019. The tenancy ended when the Tenants vacated the rental unit on July 31, 2018. Rent was established at \$1,600.00 per month, due on the first day of each month and a security deposit of \$800.00 was also paid. The tenancy agreement stipulated that there would be a **\$1,600.00** liquidated damages charge for breaking the fixed term tenancy early.

The Landlord advised that a move-in inspection report was conducted with the Tenants on March 30, 2018 and he submitted a copy of this report. He also submitted into documentary evidence a copy of the final opportunities for the Tenants to attend a move-out inspection and a copy of the move-out inspection report. The Tenants did not attend the move-out inspection.

The Landlord advised that he was seeking compensation in the amount of **\$400.00** for the cost to repair damage to the stove that the Tenants caused, likely from improper use of pots and pans. He submitted a black and white picture of the damage and he advised that he could not get a quote from a tradesperson to provide an estimate for this repair as they would charge \$500.00 at minimum just to assess the damage. The amount of compensation that he is seeking is only a guess as he is not sure how much the repair will cost. In the meantime, he purchased a touch up kit to paint over the damaged enamel to make it look more aesthetically pleasing. He stated that this was a cosmetic repair, that the stove still functions, and that the next tenants are using it without complaint. He also advised that he will be looking to get it repaired properly in the future.

The Landlord advised that he was seeking compensation in the amount of **\$150.00** for the cost of cleaning the curtains in the rental unit. He submitted into documentary evidence an outline of what must be cleaned in the rental unit at the end of the tenancy and the Tenants signed this document on July 3, 2018 agreeing to the terms. One of the terms is a curtain cleaning cost of \$150.00. He said that he charges this at the end of tenancy and he cleans the curtains because the tenants generally ruin the curtains if they clean them themselves.

Finally, the Landlord submitted that he was seeking compensation in the amount of **\$1,600.00** for the cost of liquidated damages as the Tenants provided written notice to end their fixed term tenancy on July 31, 2018. Furthermore, the Tenants provided their forwarding address in writing on this written notice to end tenancy as well. He advised that he did his best to re-rent the rental unit and showed the premises to approximately 12 to 15 prospective tenants. He stated that he re-rented the rental unit for August 1, 2018.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not comply with the requirements of ensuring attendance for the condition inspections.

However, in this case, the Landlord completed a move-in inspection report with the Tenants and provided them with two opportunities to conduct a move-out inspection. In

addition, these Sections of the *Act* pertain to a Landlord's right to claim for damage, and as the Landlord also applied for liquidated damages owing, which would not be considered solely a damage claim, the Landlord still retains a right to claim against the security deposit. As such, I am satisfied that the Landlord has not extinguished his right to claim against the security deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims for compensation for the damage to the stove, I find it important to note that the Landlord has not provided a quote to assess the cost to repair this damage, that he has not repaired the damage yet, that the stove is functioning sufficiently, and that this damage does not impact or impair the subsequent tenants' use of the stove. Furthermore, it is difficult to discern the damage to the stove in the black and white picture that was submitted into evidence. As this was primarily a cosmetic issue, and as there is no evidence to substantiate the Landlord's estimate of \$400.00 to repair this issue, I grant the Landlord a nominal award in the amount of **\$100.00** to rectify this issue.

With respect to the Landlord's claims for compensation for the cost to clean the curtains, I find it important to note that Policy Guideline # 1 states the following with respect to internal window coverings:

1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
2. The landlord is not expected to clean the internal window coverings during the tenancy unless something unusual happens, like a water leak, which is not caused by the tenant.
3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.
4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.

5. The tenant is expected to clean the internal window coverings at the end of the tenancy regardless of the length of the tenancy where he or she, or another occupant smoked in the premises.

While the Landlord has provided a “cleaning” document issued by him and signed by the Tenants on July 3, 2018 where they agreed to his condition that curtain cleaning would cost \$150.00, I do not find this term to be reasonable or enforceable as it does not provide the Tenants with the opportunity to clean the curtains themselves. Furthermore, the Landlord has not provided any documentary evidence to substantiate that the curtains were cleaned by him after the tenancy or how much it cost. As such, I am not satisfied that the Landlord has established this claim, and I dismiss it in its entirety.

Finally, with respect to the Landlord’s claim for the liquidated damages, the undisputed evidence is that the parties entered into a fixed term tenancy agreement from April 1, 2018 for a period of one year, yet the tenancy effectively ended when the Tenants vacated the rental unit on July 31, 2018. Sections 44 and 45 of the *Act* set out how tenancies end. It also specifies that Tenants must give written notice to end a tenancy and that notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

I find it important to note that Policy Guideline # 5 outlines a Landlord’s duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenants ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. I am satisfied that the Tenants gave the Landlord minimal notification that they were ending the tenancy and vacating the rental unit. I am also satisfied based on the evidence before me that the Landlord mitigated his loss by taking the necessary steps to re-rent the premises as quickly as possible.

With respect to the Landlord’s request for liquidated damages, I find it important to note that Policy Guideline # 4 states that 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” and that the “amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into”. This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- 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.

Based on the evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to, and that the genuine pre-estimate of loss does not meet the tests for establishing this amount as a penalty. Furthermore, the policy guideline states that “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.” In this instance, I find that ending a tenancy with such short notice would put the Landlord in a position where efforts to re-rent the premises would be considered sufficiently more than “negligible or non-existent”. As such, I am satisfied that the Landlord mitigated his losses and that the Landlord has sufficiently established this claim. As such, I grant a Monetary Order in the amount of **\$1,600.00** for the liquidated damages.

As the Landlord was successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Stove damage	\$100.00
Liquidated damages	\$1,600.00
Recovery of filing fee	\$100.00
Less security deposit	-\$800.00
TOTAL MONETARY AWARD	\$1,000.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,000.00** in the above terms, and the Tenants must be served with **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: December 7, 2018

Residential Tenancy Branch