



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1116874
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDCL, MNSD, FFL

Introduction

On September 9, 2022, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep the security deposit.

The matter was set for a conference call hearing. The Landlord and Tenants attended the hearing.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided.

- is the Landlord entitled to a monetary order to recover unpaid rent?
- is the Landlord entitled to a monetary order for damage or repair costs?
- is the Landlord entitled to other compensation for damage or loss?
- Can the Landlord keep the security deposit towards the claims?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on January 1, 2022, as a one-year fixed term tenancy. Rent in the amount of \$2,100.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,050.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants ended the fixed term tenancy agreement early by moving out of the rental unit on August 23, 2022, prior to the end of the fixed term agreement.

The Landlord is seeking compensation as follows:

Loss of September 2022 Rent	\$2,100.00
Damage/ cleaning	\$1,050.00
Liquidated damages	\$1,000.00
total	\$4,150.00

Rent \$2,100.00

The Landlord stated that the Tenants ended the tenancy prior to the end of the fixed term lease. The Tenants vacated the rental unit on August 23, 2023, and did not pay the rent owing for September 2022. The Landlord stated that he advertised the unit for rent and found a new tenant for October 1, 2022. The Landlord stated that he did not receive any rent from any source for the month of September 2022.

The Landlord is seeking to recover the rent due under the tenancy agreement for the month of September 2022.

In reply, the Tenants testified that they called the Landlord in August 2022. They stated that one of their parents was terminally ill and they had to go out of province for the months of May and June 2022. When they returned to B.C., they made the decision to move back home and be with family.

The Tenants stated that one of their friends asked if they could take over the unit. The Tenants stated that they noticed advertisements for the rental unit as of August 22, 2022.

Damage/ Cleaning \$1,050.00

The Landlord testified that the rental unit was very clean at the start of the tenancy. He stated that the Tenants left abruptly as he received a text message that they were leaving the next day. The Landlord stated that the Tenants did not have time to do a

proper cleaning of the rental unit, and it was left dirty/ unclean. He stated that there was dirt on the sills; a urine stain on the couch; and the oven was dirty. The Landlord hired a person clean the unit to expedite being able to re-rent the unit.

The Landlord provided an invoice for the cost of cleaning on August 31, 2022, in the amount of \$882.00. The Landlord stated that the remaining amount of his claim is for his personal effort to de-junk the unit and upholstery cleaning. He stated that there was a no pet clause and there was lots of pet hair in the unit.

In reply, the Tenants stated that they had to leave very quickly due to the circumstances. The acknowledged that they did not do a professional level cleaning and gave the unit a quick buff over. They stated that they did not clean the stove and they left a printer behind in the unit.

Lease Break Fee \$1,000.00

The Landlord stated that the tenancy agreement addendum contains a clause that the Tenants are required to pay a lease breaking fee of \$1,000.00 if they end the tenancy prior to the end of the fixed term. The Landlord provided a copy of the tenancy agreement and addendum signed by the Tenants.

The Tenants confirmed that they signed the tenancy agreement addendum. The Tenant does not feel that the amount of \$1,000.00 is reasonable for the landlord's effort to re-rent the unit. They stated that it does not cost that much to advertise.

Security Deposit

The Landlord's application includes a claim to keep the security deposit of \$1,050.00 in partial satisfaction of his claims. The Landlord stated that he received the Tenants forwarding address on August 29, 2022.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

Loss of Rent

I find that the fixed term tenancy agreement requires the Tenants to pay rent of \$2,100.00 each month. I find that the Tenants vacated the rental unit on August 23, 2023, prior to the end of the fixed term lease.

I accept the evidence that the Landlord started advertising the rental unit on or before August 22, 2023. I find that the Landlord was not required to advertise the rental unit until after the Tenants had breached the fixed term agreement by vacating the unit. I find that the Landlord took reasonable steps to mitigate against the loss of rent by advertising the unit. I accept that the Landlord did not receive rent for the unit from any other source. I award the Landlord the amount of \$2,100.00 for unpaid September 2022 rent.

Damage and Cleaning

I find that the Tenants left the rental unit unclean at the end of the tenancy. I find that the Tenants are responsible to pay the cost the Landlord paid to have the rental unit cleaned, and the Landlords time to de-junk the unit and clean upholstery.

I grant the Landlord the amount of \$1,050.00 for cleaning costs.

Lease Break Fee

I have reviewed the tenancy agreement and addendum and find that tenancy agreement addendum contains a clause that the Tenants will pay a \$1,000.00 fee to the Landlord if they end the fixed term tenancy early. The fee 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 have considered the amount of the lease break fee, which is often called liquidated damages. 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. Liquidated damages clauses will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

I find that the lease break fee is not a penalty clause as it only applies if the Tenants break the contract within the first year of the fixed term. I find the amount of the fee is not oppressive and the Tenants agreed to this fee when they signed the addendum.

I find that the Tenants ended the fixed term tenancy agreement early and are responsible to pay the lease break fee for the Landlord's time and effort to find a new tenant for the rental unit.

I grant the Landlord the amount of \$1,000.00 for the lease break fee.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,250.00 comprised of \$2,100.00 for unpaid rent; \$1,050.00 for cleaning costs; \$1,000.00 for liquidated damages; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit and interest of \$1,056.56 towards the award of \$4,250.00, I find that the Landlord is entitled to a monetary order for the balance of \$3,193.44. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants is cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants ended the fixed term tenancy early and left the rental unit unclean. The Landlord has established a monetary claim in the amount of \$4,250.00. I order that the Landlord can keep the security deposit in the amount of \$1,056.56 in partial satisfaction of the Landlord's awards.

I grant the Landlord a monetary order in the amount of \$3,193.44.

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: April 27, 2023

Residential Tenancy Branch