Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S MNDCL-S FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (Application) filed by the Landlord pursuant to the *Residential Tenancy Act* (Act). The Landlord applied for the following:

- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused to the rental unit during the tenancy pursuant to section 67;
- an order for compensation for monetary loss or other money owed by the Tenants to the Landlord pursuant to section 67;
- authorization to keep the Tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 67.

The original hearing of the Application was held on April 3, 2023 (Original Hearing). Two agents (GH and JS) for the Landlord and one of the two Tenants (JG) attended the Original Hearing. The other Tenant (BK) did not attend the Original Hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* (RoP) prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

At the Original Hearing, GH stated the Landlord served the Notice of Dispute Resolution Proceeding and its evidence (NDRP Package) on each of the Tenants by registered mail on September 22, 2022. GH provided the Canada Post tracking numbers for service by registered mail. JG stated he did not receive the NDRP Package as he is away on work

for three weeks. The Canada Post site for tracking registered mail indicates that the NDRP Packages were not picked up or signed for by either of the Tenants. As there is no evidence the Tenants received the NDRP Packages, I find the Landlord has not proven, on a balance of probabilities, that the NDRP Packages were served on the Tenants. As such, pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision dated December 6, 2022 (Interim Decision).

The Interim Decision ordered the Landlord to serve the Notice of Adjourned Hearing, the Interim Decision and the Landlord's evidence (Adjourned Hearing Package) on JG by email at the email address provided by JG at the Original Hearing and to serve JS with the Adjourned Hearing Package by any of the methods permitted by section 89 of the Act. The Interim Decision also ordered the Tenants to serve the Landlord with any evidence they considered relevant to respond to the Application and the Landlord's evidence.

The adjourned hearing (Adjourned Hearing) was held on May 18, 2023. GH and JG attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. JG stated he received the Adjourned Hearing Package. As such, I find the Adjourned Hearing Package was served on JG by the Landlord in accordance with the provisions of sections 88 and 89 of the Act. JG stated he did not serve any evidence on the Landlord for these proceedings. The Landlord did not provide any evidence the Adjourned Hearing Package was served on BK. As such, I find the Landlord has not proven, on a balance of probabilities, that the Adjourned Hearing Package was served on BK.

Issues to be Decided

Is the Landlord entitled to:

- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused to the rental unit during the tenancy?
- an order for compensation for monetary loss or other money owed by the Tenants to the Landlord?
- authorization to keep all or part of the Tenants' security deposit?
- recover the filing fee for the Application from the Tenants?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

GH submitted into evidence a copy of the tenancy agreement, addenda and an amendment between the Landlord and Tenants. The amended tenancy agreement states the tenancy commenced on October 31, 2022, for a fixed term ending November 30, 2022, with rent of $1,575.00 payable on the first day of each month. The Tenants were required to pay a security deposit of $787.50 by September 15, 2021. GH acknowledged the Tenants paid the security deposit and that the Landlord was holding it in trust for the Tenants. Based on the foregoing, I find there was a residential tenancy between the Landlord and Tenants and that I have jurisdiction to hear the Application.

GH stated the Tenants did not pay the move-out fee when they vacated the rental unit. Part of paragraph 13(d) of the tenancy agreement states:

> (d) … A move-in/move-out fee of $100.00 is due and Payable to the Landlord by the Tenant at the end of the Tenancy.

GH stated the Landlord was seeking compensation of $100.00 from the Tenants for the move-out fee.

GH stated the Tenants were late paying the rent on two occasions. JG did not dispute this testimony. Paragraph 2 of the tenancy agreement states:

> **2. Arrears, Late Payments & N.S.F. Cheques:**
>
> Arrears and late payments of any sums due to the Landlord from the Tenant are subject to a service charge of $25 for any payment made after the 1st day of the month. N.S.F. cheques are subject to an additional service charge of $25. Charge(s) must be paid by debit, certified cheque or money order. The Tenant also agrees that if rent is pai late three (3) or more times in a twelve (12) month Period, the Landlord may, at its' sole discretion, terminate the Tenancy Agreement immediately.

GH stated the Landlord was seeking $50.00 for the two late rent payments pursuant to paragraph 2 of the tenancy agreement.

GH submitted into evidence a copy of the move-out inspection report, dated August 31, 2022, that was signed by JG. GH stated the Tenants did not return the mailbox key when they vacated the rental unit and that it was noted on the move-out inspection report the mailbox key had not been returned. JG admitted he lost the key when he was in a motor vehicle accident. GH stated the Landlord was seeking $75.00 for a replacement of the key. GH submitted into evidence copies of the invoices for replacement of the mailbox key.

GH and JG agreed the Tenants vacated the rental unit on August 31, 2022, being three months before the end of the fixed term on November 30, 2022. GH stated the liquidated damages fee was a reasonable pre-estimate of the Landlord's costs to re-rent the rental unit. GH submitted into evidence a copy of an invoiced from a rental agency for $931.88 for a tenancy placement fee to corroborate his testimony on the reasonableness of the liquidated damages fee provided for in the tenancy agreement. Paragraph 3 of the addendum to the tenancy agreement states:

> **Liquidated Damages:**
>
> Without prejudice to any other remedies available to the Landlord, if the Tenant ends the fixed term tenancy prior to the end of the fixed term, or is in breach of the Residential Tenancy Act or a material term of the Tenancy Agreement that causes the Landlord to end the tenancy prior to the end of the fixed term, or any subsequent fixed term, the Tenant will pay the landlord the sum of $787.50 as liquidated damages. Such liquidated damages are an agreed pre-estimate of the Landlord's cost of re-renting the Premises and must be paid in addition to any other amounts owed by the Tenant to the Landlord. Tenant will also be responsible for any monthly rent for any moths remaining on the fixed term, until the Premises are re-rent. Landlord will take all reasonable steps to ensure the Premises are re-rented as soon as possible in order to mitigate any damages for breach of the Tenancy Agreement by the Tenant.

GH stated the Landlord was seeking compensation of $787.50 from the Tenants for liquidated damages pursuant to paragraph 3 of the addendum.

Analysis

Rule 6.6 of the RoP states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 37 of the Act states:

> 37(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant 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.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

Residential Tenancy Branch Policy Guideline 16 (PG 16) addresses the criteria for awarding compensation. PG 16 states in part:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlords' testimony and evidence regarding the claims made in the Application, I must firstly consider the joint and several liability of the Tenants and whether the Landlords complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 and 35 of the Act.

1. Joint and Several Liability of Tenants

Residential Tenancy Policy Guideline 13 (PG 13) clarifies the rights and responsibilities relating to multiple tenants renting a rent unit or manufactured home under a single tenancy agreement. PG 13 states in part:

B. TENANTS AND CO-TENANTS

A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site. If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement

states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

C. PAYMENT OF RENT

Co-tenants are jointly and severally responsible for payment of rent when it is due. Example: If John and Susan sign a single tenancy agreement together as co-tenants to pay $1800 dollars in rent per month, then John and Susan are both equally responsible to ensure that this amount is paid each month. If Susan is unable to pay her portion of the rent, John must pay the full amount. If he were to only pay his half of the rent to the landlord, the landlord could serve a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities and evict both John and Susan because the full amount of rent was not paid. The onus is on the tenants to ensure that the full amount of rent is paid when due.

D. DEBTS OR DAMAGES

Co-tenants are usually jointly and severally liable for any debts or damages relating to the tenancy, unless the tenancy agreement states otherwise. This means that the landlord can recover the full amount of rent, utilities or any damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves. For example, if John and Susan move out at the end of their tenancy, the landlord can make a claim for any damages to the property against either co-tenant, regardless of whether John was solely responsible for causing the damage.

There is no evidence that the Landlords served the NDRP or the Adjourned NDRP Package on BK. Based on PG 13, I find JG, as a co-tenant, is jointly and severally liable for payment of compensation and damages to the Landlord arising from the tenancy. As such, any monetary order I grant the Landlord for compensation and damages will only name JG.

2. Application Made by Landlord on Time

The Tenants provided their forwarding address on the Move-Out Inspection Report dated August 31, 2022. Section 38(1) of the Act states:

> 38(1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
> *(a) the date the tenancy ends, and*
> *(b) the date the landlord receives the tenant's forwarding address in writing,*
>
> *the landlord must do one of the following:*
> *(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
> *(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*
> […]

The records of the Residential Tenancy Branch state the Landlord made the Application on September 9, 2022. As such, the Landlord made the Application within 15 days of the date the tenancy ended, and the Landlord received the Tenants' forwarding address in writing.

3. Compensation for Move-Out Fee

GH stated the Tenants did not pay the move-out fee when they vacated the rental unit. GH stated the Landlord was seeking compensation of $100.00 from the Tenants for the move-out fee. Subsection 7(1)(f) of the *Residential Tenancy Regulations* (Regulations) state:

> 7(1) A landlord may charge any of the following non-refundable fees:
> […]
> (f) a move-in or move-out fee charged by a strata corporation to the landlord;
> […]

JG did not dispute the Tenants did not pay the move-out fee when they vacated the rental unit. The tenancy agreement states the Tenants were required to pay a move-in

and move-out fee charged by the strata. As such, I find the tenancy agreement complied with the requirements of section 7(1) of the Act. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that it is entitled to recover the move-out fee. Pursuant to section 67 of the Act, I order JG to pay the Landlord $100.00 for the move-out fee.

4. Compensation for Late Payment Fees for Rent

GH stated the Tenants were late paying the rent on two occasions. JG did not dispute this testimony. Subsection 7(1)(d) and section 7(2) of the Regulations state:

> 7(1) A landlord may charge any of the following non-refundable fees:
> […]
> (d) subject to subsection (2), an administration fee of not more than $25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
> […]
> (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Paragraph 2 of the tenancy agreement provides the Tenants must pay $25.00 for each late payment of rent. The provisions of paragraph 2 of the tenancy agreement comply with the requirements of section 7(1) of the Regulations. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Landlord is entitled to compensation for the late payment fees. Pursuant to section 67 of the Act, I order JG to pay the Landlord $50.00 for the two late payments of rent.

Compensation for Replacing Mailbox Key

JG admitted he did not return the mailbox key. GH stated the Landlord was seeking $75.00 for the replacement of the key and submitted into evidence copies of the invoices for replacement of the mailbox key. Section 7(1)(a) of the Regulations states:

7(1) A landlord may charge any of the following non-refundable fees:
(a) direct cost of replacing keys or other access devices;
[…]

I find the Landlord has proven, on a balance of probabilities, that it is entitled to compensation for the costs of replacing the mailbox key. Pursuant to section 67, I order JG to pay the Landlord $75.00 for replacement of the mailbox key.

Liquidated Damages for Ending Tenancy Early

The Tenants vacated the rental unit three months before the end of the fixed term of the tenancy on November 30, 2023. As such, the Tenants were in breach of the terms of the tenancy agreement. Paragraph 3 of the addendum to the tenancy agreement provides the Tenants are required to pay $787.50 for liquidated damages for ending the tenancy before the end of the fixed term. *Residential Tenancy Policy Guideline 4* (PG 4) provides guidelines in situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages. PG 4 states in part:

> […]
> 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.
>
> There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:
>
> - 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.

> 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. […]

GH provided a copy of the invoice for a tenant placement fee in the amount of $931.88. The placement fee was greater than the liquidated damages fee of $787.50 that Landlord was required to pay to re-rent the rental unit to another tenant. As such, I find the amount of the liquidated damages charge was reasonable. As such, I find the liquidated damages fee provided for in the addendum to the tenancy agreement is enforceable by the Landlord against the Tenants. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that it is entitled to compensation of $787.50. Pursuant to section 67 of the Act, I order JG to pay the Landlord $787.50.

Based on the foregoing, I find JG owes the Landlord $1,012.50, calculated as follows:

Purpose	Amount
Moving-Out Fee	$100.00
Late rent payment fees for July and August 2022 (2 x $25.00)	$50.00
Replacement of Mailbox Key	$75.00
Liquidated Damage Fee	$787.50
Total:	**$1,012.50**

Pursuant to section 72(2) of the Act, I order the Landlord to deduct the security deposit of $787.50 from the $1,012.50 compensation to be paid by JG, leaving a balance of $225.00 owing by JG to the Landlord.

As the Landlord has been partially successful in the Application, pursuant to section 72 of the Act, I order JG to pay the Landlord $100.00 for the filing fee of the Application.

Conclusion

I order JG to pay the Landlord $325.00 as follows:

Purpose	Amount
Compensation payable to the Landlord:	$1,012.50
Filing Fee of Landlord's Application	$100.00
Less: Tenants' Security Deposit	-$787.50
Total:	$325.00

The Landlord must serve the Monetary Order on JG as soon as possible. Should JG 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: May 31, 2023

Residential Tenancy Branch