



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL / MNSDB-DR, FFT

Introduction

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

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$7,946.62 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenants' application for:

- a monetary order for \$13,556 representing two times the amount of the security deposit and pet damage deposit, plus the amount of pre-paid rent the landlord refuses to return to the tenants, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties confirmed that each had received the other's notice of dispute resolution proceeding package and supporting documentary evidence.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$7,946.62;
- 2) recover the filing fee;
- 3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Are the tenants entitled to:

- 1) a monetary order of \$13,556;
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting September 16, 2022 and ending September 15, 2023. Monthly rent was \$4,150 payable on the 16th day of each month. The tenants paid the landlord a security deposit of \$2,075, and a pet damage deposit of \$2,075, which the landlord continues to hold in trust for the tenants. Additionally, the tenants prepaid three months' rent (\$12,450) at the start of the tenancy which were to be applied to the 10th, 11th, and 12th month's rent, per a term in the tenancy agreement.

The tenancy agreement has two clauses of relevance to this application. A liquidated damages clause which states:

Should the tenant break the existing lease or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the lease, the tenant will pay the sum of \$4300.00 to the landlord as liquidated damages, and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental property and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental property. The tenant is responsible for all rental payments until the property is re-rented to a new tenant approved by the landlord.

And a cleaning fee clause which states:

At end of lease the home must be returned in the same condition as given (i.e., professionally cleaned). If the place is not cleaned satisfactorily a \$500 cleaning fee will be charged and deducted from the damage deposit.

The parties conducted a move-in condition inspection at the start of the tenancy and a move out condition inspection when the tenants moved out on May 27, 2023.

On March 13, 2023, the tenants e-mailed the landlord and let her know that they would be moving out at the end of May 2023. They suggested that the parties mutually agreed to end the tenancy, so the landlord could find someone new to rent the rental unit for a 12-month term. In the alternative, they suggested that they could find someone to take over their tenancy agreement.

The parties agree that the tenants did not pay any rent from March 16 to May 31, 2023 and that the amount of rent owed for this period should be deducted from the three months rent they pre-paid at the start of the tenancy.

The landlord testified that she refused to allow the tenants to sublet the rental unit, as it was her home, and she did not want anyone she had not vetted to move into the rental unit.

As such, she testified that she began to take steps herself to re rent the rental unit starting March 14, 2023, and that she secured a new tenant on June 1, 2023. Complicating this, however, was the fact that she was out of the country at the time and did not want to use a property management company to re-rent the rental unit. She arranged the viewings of perspective renters herself, and then once she had entered into a tenancy agreement with one of them, she returned to Canada from Asia on May 2, 2023 to look after the transition of the rental unit to the new tenant and to turn over possession of the rental unit to them.

The tenants provided the landlord with their forwarding address, via e-mail, on May 19, 2023. They vacated the rental unit on May 31, 2023.

1. Landlord's Claim

The landlord seeks to recover the cost of her return travel (\$1,609.75), her lodging costs while back in Canada for one month (\$3,244), and the cost of insuring and driving her vehicle during her time in Canada (\$191.58). Additionally, she seeks to recover compensation for the time she spent securing a new tenant (\$4,150). She stated that this amount is what a property management agent would have charged her for securing a new tenant. The landlord also seeks to recover \$76.29 which is the cost of her conducting a background screening of the new tenant.

The landlord also seeks to recover liquidated damages equal to \$4,300, per the tenancy agreement.

The landlord testified that the tenants did not adequately clean the rental unit prior to moving out. She testified that they did not clean the carpets, that there was mildew in the shower, and spider webs in the ceiling lights. She testified that she spent two full days cleaning the rental unit prior to turning it over to the new renter. She seeks to recover \$500 for this, per the tenancy agreement.

The tenants denied that the rental unit was not sufficiently cleaned prior to their moving out. They testified they hired a professional cleaner, who spent five hours cleaning the rental unit. They provided an invoice supporting this, which showed that the carpets and bathroom were cleaned and that the rental unit was dusted.

The tenants argued that they provided the landlord with more than sufficient notice to secure a new tenant, and that the landlord did not happen reasonably to minimize her loss. They testified that they offered to assist the landlord in re-renting the unit, which would have reduced the amount of work she had to do, but the landlord refused.

2. Tenants' Claim

The tenants seek the return of the prepayment of rent and an amount equal to double the security deposit. They stated that the landlord should not simply be able to keep the deposits because she feels she is entitled to it, but rather should have returned the deposits and balance of prepaid rent, and then make an application claiming against these amounts.

Analysis

1. Tenants' Claim

Section 38 of the Act requires a landlord, no later than 15 days after the end of the tenancy, to either return the deposits or make a claim against the deposits with the Residential Tenancy Branch (the RTB). If they do neither of these, they are required to pay the tenants an amount equal to double the deposits.

The landlord made her application on May 22, 2023, prior to the end of the tenancy. As such, she complied with the requirements of the Act, and the tenants are not entitled to double the deposits.

There is no mechanism under the Act for me to order that the landlord return an amount equal to double the balance of the rent pre-payment to the tenants.

As such, I dismiss the tenant's application, in its entirety, without leave to reapply.

2. Landlord's Claim

a. Liquidated Damages

RTB Policy Guideline 4 addresses liquidated damages. It 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. 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.

Section 45 of the Act sets out how a tenant can end a fixed term tenancy prior to the end of the fixed term: the tenant must notify the landlord of a breach of a material term in writing and give them reasonable period in which to correct the issue. These circumstances do not apply to this case.

Tenants are not unilaterally permitted to end a tenancy prior to the end of a fixed term. As such, I find by moving out of the rental unit prior to the end of the fixed term, the tenants breached the tenancy agreement, and the liquidated damages clause applies.

I have reviewed the clause, and do not find that it amounts to a "penalty". Rather, I find that it is a genuine pre-estimate of the cost of re-renting the rental unit, as supported by the landlord's testimony that hiring a property manager to re-rent the rental unit would have been approximately the same as the amount of the amount payable under the liquidated damages clause.

I must also note that section 34 of the Act requires a landlord to not unreasonably withhold their consent to allow a tenant to sublet the rental unit if there are six or more months remaining in the fixed term. At the time the tenants vacated the rental unit, there were less than six months left in the fixed term, so they were not entitled to be able to sublet the rental unit under the Act.

For these reasons, I find that the landlord is entitled to recover the amount specified in the liquidated damages clause. I order that the tenants pay the landlord \$4,300.

b. Losses due to the tenants' breach of the Act

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due as:

- 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.

Rule of Procedure 6.6 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.

So, in order to be successful, the landlord must prove it is more likely than not that the tenants failed to comply with the Act, that she suffered a quantifiable loss as a result of this failure, and that she acted reasonably to minimize the damages caused by the breach. If she fails to prove any one of these factors, her claim for compensation as a result of a breach of the Act will fail.

i. Travel and re-renting costs

Based on the evidence presented at the hearing, I cannot find that the landlord is entitled to recover any amount of the expenses she occurred for re-renting the rental unit. First, the liquidated damages, by their very definition are intended to reimburse the landlord for such expenses. The non-travel costs accord almost exactly to the amount of the liquidated damages. Accordingly, I decline to order that the tenants reimbursed the landlord those amounts, as it would represent double recovery.

Second, I find that the landlord failed to act reasonably to minimize her loss. I find that it was unreasonable for the landlord to have returned from Asia to Canada in order to facilitate the move out of the tenants and the move in of the new tenant, when property

management companies exist to undertake this exact sort of task. It may be that the landlord desired to meet the new renter of the rental unit herself, prior to the start of the tenancy. However, I do not find that reasonable for her to have incurred the costs she did to do this. For this reason, I decline to order that the tenants pay the landlord any portion of the cost she incurred for returning to Canada.

ii. Cleaning costs

Based on the invoice from the cleaner submitted into evidence, I find that the tenants did clean the rental unit, including the carpets and bathroom, and that they had the rental unit dusted prior to the end of the tenancy. I do not find that the rental unit was not reasonably cleaned when they moved out. The landlord has not provided sufficient evidence to demonstrate the contrary.

As such, I decline to order that the tenants pay the landlord any amount associated with the cleaning costs. I dismiss this portion of the landlord's application.

c. Unpaid rent

As stated above, the parties agree about the tenants did not pay any rent between March 16 and May 31, 2023, and that this the amount of rent payable during this time (which the parties agree is \$10,375) should be deducted from the prepayment of three month's rent at the start of the tenancy (\$12,450).

As such, I find that the landlord holds a balance of \$1,075 in trust for the tenants and that she must return this amount.

d.

e. Filing fee and deposits

As the tenants have been mostly successful in defending themselves against the landlord's claim, I decline to order that the landlord recover the filing fee. Per section 72(2) of the Act, I order that the landlord may retain the security and pet damage deposits in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62 and 72 of the Act, I order that the landlord pay the tenants \$925, representing the following:

Description	Total
Security and pet damage deposit	\$4,150.00
Balance of rent pre-payment	\$1,075.00
Liquidated damages	-\$4,300.00
	\$925.00

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: January 8, 2024

Residential Tenancy Branch