



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard.

Issue(s) to be Decided

1. Whether the tenant damaged the rental unit in excess of reasonable wear and tear.
2. Whether the tenant failed to pay rent.
3. Whether the landlord is entitled to keep all or part of the security deposit.
4. Landlord's entitlement to liquidated damages.
5. Landlord's entitlement to returned cheque fees and bank charges.
6. Award of the filing fee.

Background and Evidence

Upon review of the evidence before me, I make the following findings concerning the tenancy. The one-year fixed term tenancy began June 15, 2007. The monthly rent was \$1,150.00. The tenant gave notice to end the tenancy March 7, 2008 and vacated on March 27, 2008. The tenants paid rent for the month of March 2008 but not for April 2008. New tenants moved in to the rental unit in early April 2008. The landlord and tenant had participated in a move-in and move-out walk through but the landlord did not prepare inspection reports.

The tenancy agreement provides for liquidated damages of \$1,150.00 if the tenant ends the fixed term tenancy before the end of the term. The tenancy agreement provides

that the tenant will be subject to an administration fee of not more than \$25.00 for late payment, returned or NSF cheques, plus the amount of any service fees charged by a financial institution to the landlord. With respect to the tenant's obligation to repair the rental unit, the tenancy agreement provides that the tenant must maintain reasonable health, cleanliness and sanitary standards. The tenancy agreement also provides that the tenant must repair damage caused by the tenant or persons permitted on the property by the tenant; however, the tenant is not responsible for repairing reasonable wear and tear.

In filing the application for dispute resolution, the landlord indicated that he is seeking compensation for liquidated damages of \$1,150.00; administration fees of \$25.00 for each cheque returned plus \$7.00 for bank charges; \$189.00 for carpet cleaning and \$150.00 for repairs. In addition, the landlord was seeking recovery of the \$50.00 filing fee.

The landlord stated that the liquidated damages are charged to cover costs associated with re-renting the unit. The landlord provided evidence of four cheques returned for non-sufficient funds, including bank charges of \$7.00 for each returned cheque. The landlord provided receipts showing the amount paid for carpet cleaning and repairs.

The tenant testified that he discussed ending the tenancy early with the landlord; however, he does not recall discussing the requirement to pay liquidated damages. The tenant does not dispute the four returned cheques. The tenant denied causing any damage to the rental unit in excess of normal wear and tear. In fact, the tenant stated that the carpets were reasonably clean and the tenants even tried using existing nail holes to hang their pictures. Other wall repairs were to address gaps in the wall caused by the shifts in the structure. The tenant explained that they moved out early to obtain larger accommodation in anticipation of having a baby.

The return of the tenant's security deposit was dealt with in a previous dispute resolution proceeding (file 719395). As a result the security deposit was ordered to be returned to the tenants and the landlord no longer has possession of the security deposit; therefore, I can make no award to the landlord for retention of the security deposit.

Analysis

With respect to the liquidated damages, I find that the provision for liquidated damages was a term agreed to in advance, and in writing, by the parties. There is no question the tenants ended the tenancy prior to the expiration of their fixed term. I do not find that the liquidated damages provision is a penalty on the tenant, but rather compensation for having to re-rent the rental unit. The tenants' reasons for ending the tenancy early in order to obtain larger living accommodation is not a basis to waive a valid agreement between the parties. Nor do I find that the landlord agreed to not charge the tenants with liquidated damages. Therefore, the landlord has established that the tenants are obligated to pay the amount of liquidated damages provided in the tenancy agreement. Accordingly, the landlord is awarded liquidated damages of \$1,150.00.

Section 7 of the Residential Tenancy Regulation provides for the non-refundable fees a landlord may charge a tenant, provided it is included in the tenancy agreement, including

- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (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;

As the tenants issued four cheques to the landlord that were returned for non-sufficient funds and the provision for the above fees was in the tenancy agreement, the landlord

has established an entitlement to charge the tenants \$100.00 in administration fees and \$28.00 for the charges the landlord's financial institution charged the landlord.

Therefore, I award the landlord \$128.00 in accordance with section 7 of the regulation.

With respect to damages to the rental unit, I find that the landlord has not provided sufficient evidence to demonstrate the tenants damaged the rental unit. In other words, the damage could be from previous tenants or structural shifts as stated by the tenant. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Therefore, I make no award to the landlord for damages to the rental unit.

With respect to carpet cleaning, since the tenancy lasted less than one year and the tenants did not smoke in the rental unit or have pets, I accept the tenant's testimony that the carpets were reasonably clean. Furthermore, the tenancy agreement does not provide that the tenant must professionally clean the carpet at the end of the tenancy. Therefore, I find that the tenants have met their obligation to leave the carpets in a reasonably clean state and the landlord is not awarded costs for professionally cleaning the carpets.

Where a tenant ends a fixed term tenancy early the tenant can be held accountable for loss of rent incurred by the landlord, provided the landlord minimized the amount of the loss. Although the landlord in this case testified that he suffered loss of rent of approximately one-half month's rent for April 2008, the tenant testified that new tenants moved in April 2, 2008. I find that the landlord did not provide sufficient evidence to substantiate the amount of the loss of rent and I make no award to the landlord for unpaid rent.

Finally, as per the authority afforded to me under the Act, I award the landlord with the cost of the filing fee as the landlord was successful in establishing an entitlement to the majority of the landlord's monetary claim.

In light of the above findings, the landlord is provided with a Monetary Order, calculated as follows:

Liquidated damages	\$ 1,150.00
NSF administration fee and bank charges	128.00
Filing fee	<u>50.00</u>
Monetary Order	<u>\$ 1,328.00</u>

The landlord must serve the Monetary Order upon the tenant and may enforce in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord is provided a Monetary Order in the amount of \$1,328.00.

September 23, 2008

Date of Decision
