

Dispute Resolution Services

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

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover rental arrears, damage to the unit, loss of revenue and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. At the outset of the hearing it was explained that all rent within the tenancy was paid. The relevant residual application by the landlord does not claim unpaid rent.

Both parties attended the conference call hearing and participated by submissions and affirmed testimony to these proceedings.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

It is noteworthy that at the outset of the hearing the tenant testified the only claim of the landlord which is in dispute is an amount of \$850 for loss of revenue for the month of April 2009 – the month following the end of the tenancy.

This tenancy began December 01, 2008 as a fixed term tenancy with an end date of November 30, 2009. The tenancy ended March 31, 2009. Rent in the amount of \$850 was payable in advance on the first day of each month, and at the outset of the tenancy, the landlord collected a security deposit and pet damage deposit from the tenant in the

sum of \$625. The landlord's evidence on their application is that the tenant gave Notice to Vacate on February 27, 2009 and vacated March 31, 2009.

The landlord is claiming a quantum of charges for:

Cleaning	\$225
liquidated damages	\$300
loss of revenue	\$850
late fee	\$ 20 for April 2009

Again, the only charge in dispute is the loss of revenue in the amount of \$850.

The landlord testified and submitted that a material term of the tenancy agreement [section 3(a)(i)] stipulates as follows:

*To terminate this lease prior to the expiry date on the 30 day of November 2009 the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. **In addition, the tenant is required to pay \$300 as liquidated damages to cover administration costs – this is not a penalty.***

An End of Tenancy condition inspection report was submitted by the landlord indicating it was performed along with the tenant on April 01, 2009 – subsequent to the tenancy ending. The report was signed by the tenant. The report indicates a number of deficiencies were identified by the landlord and tenant – for which the landlord is claiming.

Analysis

Based on the landlord's own evidence the tenant gave the landlord proper notice in accordance with the Residential Tenancy Act (the Act) and the landlord's own tenancy agreement.

I find the landlord is not entitled to the \$20 late fee for April 2009 as at this juncture the tenancy had properly ended.

The landlord received legal Notice to End the tenancy. I find the landlord is in the business of renting their suites, and had an obligation to act on this legal notice in respect to preparing to re-rent the suite for the day following the date the legal notice to end took effect – April 01, 2009. The tenant vacated March 31, 2009, and the landlord

is not advancing that any remediation of the suite prevented the landlord from re-renting the suite for April 1, 2009. Therefore, **I find** the landlord is not entitled to claim loss of revenue for April 2009.

I find the landlord is entitled to their claim of **\$300** for liquidated damages.

I grant the landlord the undisputed sum of **\$225** for cleaning.

The landlord's total entitlement is the amount of **\$525**.

As there is partial merit to the landlord's claim, **I grant** the landlord recovery of the filing fee in the amount of **\$50** for a quantum of **\$575**.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's entitlement is less than the tenant's total deposit and interest of **\$626.28**, it is appropriate that I order the return of the balance of the tenant's deposits and interest. **I so order.**

Conclusion

I grant the tenant a Monetary Order in the amount of **\$51.28**. If necessary, this order may be registered in the Small Claims Court and enforced as an order of that court.

Dated July 17, 2009