



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes

MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or Tenancy Agreement, and to keep all or part of the security deposit in partial satisfaction of the monetary claim. The landlord's application is inclusive of a request to recover the filing fee in respect to this application.

I accept the landlord's evidence, and find that the tenant was served with the application for Dispute Resolution and Notice of Hearing by registered mail, in accordance with Section 89 of the Residential Tenancy Act (the Act). And, despite the tenant having been properly served with the application for Dispute Resolution and Notice of Hearing the tenant did not participate in the conference call hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

The tenants have vacated the rental unit.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony of the landlord is as follows. The tenancy began September 04, 2008 as a fixed-term tenancy ending August 31, 2009. Rent in the amount of \$4800 per month was payable on the first day of the month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$2400. The tenant vacated the rental unit on April 02, 2009. An end of tenancy inspection was conducted by the

parties on April 02, 2009, at which time the tenant signed the inspection report agreeing to the deduction from the security deposit of a quantum of items with no applied value.

The landlord was immediately able to re-rent the unit - accepting a new tenant and tenancy agreement beginning May 01, 2009 for the amount of \$3500 per month as per current market and circumstantial conditions. In this regard, the landlord was consequently able to mitigate the subject tenant's liability under the tenancy agreement

The landlord's claim seeks compensation associated with the fixed term conditions of the tenancy agreed to by the tenant at the outset of the tenancy in the Tenancy Agreement for, liquidated damages - cost to the landlord's Agent to re-rent the property. The landlord's claim is for \$1750 plus \$15.70 for a credit check. The Tenancy Agreement provided by the landlord states as follows:

24. **Liquidated Damages:** In the event that the tenant terminates this agreement during the fixed term, the tenant will pay to the landlord's Agent liquidated damages, cost to the landlord's Agent to re-rent the property. Expenses to include but not limited to advertising, credit checks, and applicable re-leasing fees.

The landlord further claims an amount equal to the rent for the month of April 2009 as loss of revenue, in the amount of \$4800.

As the landlord was able to re-rent the property for May 01, 2009, the landlord seeks the difference in the amount of the tenant's fixed term Agreement and the amount in which the landlord was able to re-rent the property to the new tenant. The landlord provided a copy of the new tenant's Tenancy Agreement effective May 01, 2009 stipulating the rent as \$3500 per month and with a term beyond the fixed term of the subject tenant's Agreement of August 31, 2009. The landlord determined to deduct \$350 per month from the monthly difference of \$1300 – for a claim of \$950 for each of the months of May, June, July and to August 31, 2009 – the end of the tenant's fixed term Tenancy Agreement – for a total claim of \$3800 in lost revenue.

The landlord provided receipts for carpet cleaning, general cleaning costs, and remediation to walls (patching) in the total amount of \$610.71, and identified that these costs had been agreed to by the tenant at the end of the tenancy.

Analysis

On the preponderance of the evidence I have reached a decision in respect to the monetary claims advanced by the landlord.

I find the landlord is entitled to an amount equal to the rent for the month of April 2009 as loss of revenue, in the amount of **\$4800**.

In respect to the landlord's claim for liquidated damages:

I find the Tenancy Agreement is mute as to the amount for liquidated damages. 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, which under the Act is not enforceable. Further, the *liquidated damages clause* adds advertising costs, credit checks and other associated costs; which a Dispute Resolution Officer can consider if accompanied by receipts for these costs. The landlord has not provided receipts for these ancillary expenses. Under the circumstances advanced by the landlord's evidence I find the landlord is not entitled to compensation for liquidated damages and a credit check fee in the total amount of \$1765.70, and I dismiss this portion of the landlord's claim without leave to reapply.

I find the landlord is entitled to the difference in the amount of the tenant's fixed term Agreement and the amount in which the landlord was able to re-rent the property to the new tenant, in the amount of **\$3800**.

I find the landlord is further entitled to **\$610.71** in costs to remediate the rental unit subsequent to the tenant vacating the unit, and as agreed to by the parties at the time of the end of tenancy condition inspection.

I find the landlord's application has merit, and therefore the landlord is entitled to recover the filing fee from the tenants for the cost of this Application in the amount of **\$100** for a total entitlement to the landlord of **\$9310.71**.

Conclusion

I order that the landlord retain the deposit and accrued interest of \$2411.70 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$6899.01**.

If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 21, 2009.