



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for loss of rental income, for liquidated damages, for cleaning expenses and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit to offset some of the alleged damages.

The Landlord served the Tenant with the Application and Notice of Hearing by registered mail on April 17, 2009. According to the Canada Post online tracking system, the Tenant received the hearing package on April 22, 2009. I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in her absence.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
2. Is the Landlord entitled to compensation for other damages and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on December 8, 2008 and was to expire on December 31, 2009, however it ended on March 30, 2009 when the Tenant moved out. Rent was \$1,350.00 per month. The Tenant paid a security deposit of \$675.00 at the beginning of the tenancy.

The Landlord said that on March 30, 2009 the Tenant gave her written consent to pay liquidated damages of \$300.00, a loss of rental income for 14 days in April 2009 and carpet cleaning expenses. The tenancy agreement contains a clause which states that if the Tenant terminates the agreement prior to December 31, 2009, the "Tenant is required to pay \$300.00 as liquidated damages to cover administrative costs – this is not a penalty." The Landlord also provided a copy of a move out condition inspection report and an invoice for carpet cleaning.



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Analysis

RTB Policy Guideline #4 states that an amount of liquidated damages 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.” It also states that “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.”

The Landlord claimed that the liquidated damages amount was a pre-estimate of advertising expenses as well as administrative expenses for preparing and actively showing a unit to re-rent it as soon as possible. In the circumstances, I find that the amount is reasonable and enforceable and that the Landlord is entitled to recover that amount.

The Landlord claimed that the rental unit was re-rented for April 15, 2009. However the Landlord calculated a pro-rated loss of rental income for April 2009 based on the average number of days in a month (ie. 30.41) rather than the actual number of days for the month in question. Given that the Landlord is seeking a loss of rental income for only one month, I find that it would be appropriate to calculate loss of rental income based on the actual number of days in the month in question. Consequently, I find that the Landlord is entitled to recover \$630.00.

The tenancy agreement does not require the Tenant to clean the carpets at the end of the tenancy. RTB Policy Guideline #1 states at p. 2 that a Tenant will usually only be responsible for cleaning a carpet after a tenancy of about a year unless the Tenant has stained the carpets, had pets or smoked in the rental unit. The tenancy was of a short duration (4 months) and the move out condition inspection report makes no mention of the carpet being dirty. However, I find that the Tenant nonetheless agreed to be responsible for carpet cleaning and in reliance on that agreement, the Landlord incurred expenses of \$65.00 and is entitled to be reimbursed on that basis.

As the Landlord has been successful in this matter, I find that she is entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant’s security deposit in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Liquidated damages:	\$300.00
Loss of rental income:	\$630.00
Carpet cleaning:	\$65.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,045.00



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Less: Security deposit:	(\$675.00)
Accrued interest:	<u>(\$0.66)</u>
Balance Owing:	\$369.34

Conclusion

A monetary order in the amount of **\$369.34** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: July 15, 2009.

Dispute Resolution Officer