



Dispute Resolution Services

Page: 1

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 unpaid rent, for cleaning expenses, for liquidated damages, and to recover a move in allowance as well as the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit in partial satisfaction of the alleged damages.

The Landlord served the Tenants by registered mail (to their forwarding address) with the Application and Notice of Hearing on May 19, 2009. According to the Canada Post online tracking system, a notification card was left for the Tenants on May 21, 2009 and they refused service of the documents on June 30, 2009. I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on January 1, 2009 and was to expire on December 31, 2009, however it ended on April 30, 2009 when the Tenants moved out. Rent was \$1,750.00. The Tenants paid a security deposit of \$875.00 on December 22, 2008.

The Landlord said that the Tenants are in arrears of rent for April 2009 in the amount of \$1,125.00 and for parking in the amount of \$110.00. The Landlord said the Tenants paid rent for April 2009 in part by cheque but it was returned for non-sufficient funds. Consequently, the Landlord also sought an NSF fee of \$25.00 and a late payment fee of \$20.00 as set out in the tenancy agreement.

The Landlord sought to recover liquidated damages of \$300.00 pursuant to a term of the tenancy agreement as well as reimbursement of a \$500.00 moving/food allowance which the Tenants agreed in writing to repay if they moved out before 6 months. The

Landlord also sought to recover carpet cleaning expenses of \$84.00 and general cleaning expenses of \$24.00.

Analysis

In the absence of any evidence from the Tenants to the contrary, I find that there are rent arrears for April 2009 in the amount of \$1,125.00. However, I find that parking charges were not included in the tenancy agreement and as a result, they are not recoverable. The Landlord is however, entitled to recover a \$20.00 late fee and \$25.00 NSF fee which she claimed was charged to the Landlord by its financial institution.

RTB Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of damages that the parties agreed would be payable if the Tenants breached the tenancy agreement. If the liquidated damages clause is determined to be valid, the tenant must pay the sum even if the actual damages are minimal or non-existent. In this case, I find that the amount of the liquidated damages is a reasonable pre-estimate of what the Landlord's expenses would be to re-rent the unit on an expedited basis if the Tenants ended the tenancy early. Consequently, I find that the clause is valid and enforceable.

In the absence of any evidence from the Tenants to the contrary, I find that they agreed to reimburse the Landlords a \$500.00 moving allowance if they moved out before the first 6 months of the tenancy. As the Tenants did, in fact, move out 4 months after the tenancy started, I find that the Landlord is entitled to recover this amount.

In support of its claim for carpet cleaning and general cleaning, the Landlord provided a copy of a written agreement whereby the Tenants agreed to the Landlord deducting from their security deposit the amount of \$84.00 for carpet cleaning and \$24.00 for general cleaning. Consequently, I find that the Landlord is entitled to recover those amounts. 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 Tenants' security deposit plus accrued interest in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Rent arrears:	\$1,125.00
Late fee:	\$20.00
NSF fee:	\$25.00
Liquidated damages:	\$300.00
Moving allowance:	\$500.00
Carpet cleaning:	\$84.00



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

General cleaning:	\$24.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$2,128.00
Less: Security deposit:	(\$875.00)
Accrued interest:	<u>(\$0.36)</u>
Balance owing:	\$1,252.64

Conclusion

A monetary order in the amount of **\$1,252.64** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: August 12, 2009.

Dispute Resolution Officer