

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*(Act), regulation or tenancy agreement, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee. The hearing was reconvened to today's date to allow the landlords agent opportunity to provide a copy of the invoice sent to the landlord for costs incurred by the management company.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent to the tenants by registered mail on February 12, 2010.

The landlords agent and both tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for money owed under the tenancy agreement?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both Parties agree that this tenancy started on July 01, 2009 and ended on February 01, 2010. A written tenancy agreement was in place for a fixed term tenancy of one year with a expiry date of June 30, 2010. The rent for this unit was \$1,100.00 per month and was due on the first of each month. The tenants paid a security deposit of \$550.00 on June 16, 2009. The tenants gave the landlord their forwarding address in writing on February 02, 2010.

The landlords' agent testifies that the tenants ended the tenancy before the end of the fixed term and he seeks to enforce the clause in the tenancy agreement for liquidated damages of \$1,100.00. This clause states that this sum is not a penalty but is for administration costs incurred in having to re-rent the unit again.

The landlords' agent states that the actual costs incurred were \$619.50 which is a cost his management company charge to the landlord to re-rent the unit. The landlords' agent has provided a copy of the invoice sent to the landlord for these costs.

The landlords' agent seeks to keep the tenants security deposit in partial payment of these costs and seeks a monetary Order for the remainder. The landlord also seeks to recover the cost of filing this application of \$50.00.

The tenants dispute these costs. The tenants state that the unit was re-rented seven days after they ended the tenancy and claim that the landlord would not have incurred these costs. The tenants claim the landlords advertised the rental unit on Craig's list which is a free site. The tenants state the landlords' agent has not provided a breakdown of the actual costs incurred.

Analysis

I have carefully considered the evidence before me, including the affirmed evidence of both parties. I find the landlord did include a liquidated damages clause for \$1,100.00 in the tenancy agreement which has been signed by both parties. I find the sum of \$1,100.00 to be an unreasonable amount to charge as liquidated damages for the costs involved in re-renting the unit. The landlords agent has provided evidence, and given sworn testimony, that the actual costs incurred by the landlord are his management fees of \$619.50 not \$1,100.00 as claimed by the landlord. Consequently, it is my decision that the tenants did break the lease before the end of the fixed term and the landlord is entitled to recover a reasonable sum in liquidated damages. Therefore, I find the landlord is entitled to a monetary award for these costs of **\$619.50** pursuant to section 67 of the *Act*.

I Order the landlord pursuant to section 38(4)(b) to keep the tenants security deposit in partial payment of this sum and issue a Monetary Order for the outstanding balance. I further find as

the landlord has been partially successful with her claim that she is also entitled to recover the cost of filing her application of **\$50.00** pursuant to section 72(1) of the Act. A Monetary Order has been issued for the following amount:

Liquidated damages	\$619.50
Subtotal	\$669.50
Less security deposit	(-\$ 550.00)
Total amount due to the landlord	\$119.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$119.50**. The order must be served on the respondent and is enforceable through the Provincial Court 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 09, 2010.

Dispute Resolution Officer