



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MND, MNSD, MNDC, MNR, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, repair and painting and for liquidated damages and the loss of income incurred when the tenants ended a fixed term lease prior to the end date. The landlord also applied for the recovery of the filing fee and to retain the security deposit in partial satisfaction of his claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs incurred to clean, paint and repair the rental unit? Is the landlord entitled to loss of income and the filing fee? Is the landlord entitled to retain the security deposit in satisfaction of his claim?

Background and Evidence

The tenancy started on October 01, 2009 for a fixed term of one year. Rent was \$1,550.00 per month due on the first of the month. The tenants paid a total of \$750.00 as a security deposit.

The tenancy ended on May 01, 2010. The tenants stated that they decided to move out due to the presence of mice in the rental unit. They stated that they verbally informed the landlord in December 2009 and in January, the landlord visited the unit and plugged some holes in the walls and gave them rat traps. The landlord denied having been informed of the problem in December and denied giving the tenants rat traps.

He agreed that he had plugged holes in the walls but did not recall the date that he did so. The landlord hired a pest control company and the treatment was carried out on March 08, 2010.

The landlord stated that a portion of a wall was painted black without his permission and he incurred costs to restore the wall to its original colour. The landlord applied for \$750.00 for painting and cleaning the unit but did not file any evidence to support his claim. The tenants admitted to having painted a portion of the wall black and agreed to pay \$250.00 towards the cost of repainting the wall. The tenants stated that they cleaned the unit and did not cause any damage.

The tenants stated that after they moved out, they made several unsuccessful attempts to schedule a move out inspection and return the keys to the landlord. The tenants agreed that they finally returned the keys on May 13, 2010. The landlord is claiming \$800.00 for loss of income for May.

The landlord advertised the availability of the unit and had several showings. He stated that he was able to get a tenant for July and suffered a loss of income for May and June. The landlord has applied for \$800.00 for loss of income and \$3,100.00 for liquidated damages as per a term and condition of the tenancy agreement.

The landlord is claiming the following:

1.	Loss of income for May	\$800.00
2.	Liquidated damages	\$3,100.00
3.	Cleaning, painting and repair	\$750.00
4.	Filing fee	\$50.00
	Total	\$4,700.00

Analysis

Section 4 of the *Residential Tenancy Policy Guideline* deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of 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 and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, a Dispute Resolution Officer will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. In this case, I find the sum of \$3,100.00 to be extravagant when compared to what it would cost the landlord to re rent the unit. Clauses of this nature can also be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. I find the amount of the clause to be invalid and I therefore interpret the liquidated damages provision to be a penalty and unenforceable. Accordingly, the landlord's claim for \$3,100.00 is dismissed.

The tenants returned the keys to the landlord on May 13, 2010 and therefore, I find that the landlord is entitled to \$800.00 that he has claimed for loss of income for the month of May.

The landlord has not filed any evidence to support his claim of \$750.00 for cleaning, painting and repairs. Since the tenant agreed to pay \$250.00 towards painting, I will award the landlord this amount.

The landlord has proven a large portion of his case and is therefore entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim of \$1,100.00. He currently has in his possession the tenant's security deposit of \$750.00. I order that the landlord retain the security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$350.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for the amount of **\$350.00**.

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: September 27, 2010.

Dispute Resolution Officer