



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute codes MNDC, MNR, MNSD, FF

Introduction

This was an application by the landlord for a Monetary Order and an order to retain the security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlord was represented by its property manager. The tenants did not attend although they were served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent to their forwarding address on June 16, 2010.

Background and Evidence

The tenancy began on November 1, 2009 for a 12 month fixed term with rent in the amount of \$950.00 due in advance on the first day of each month. The tenants paid a security deposit of \$475.00 on October 28, 2009.

The tenants gave one month's notice and moved out of the rental unit on May 31, 2009. The landlord succeeded in re-renting the unit effective July 1, 2010. The landlord has claimed payment of the following amounts:

Loss of revenue for June:	\$950.00
Painting charges:	\$636.93
Suite cleaning	\$30.00
Advertising charges:	\$9.00
Liquidated damages:	\$300.00

Total: \$1,925.93

The landlord's representative testified that the landlord was unable to re-rent the unit for the months of June, but succeeded in re-renting for July. The landlord relied upon the following provision of the tenancy agreement as the basis for its claim to liquidated damages:

If the Tenant ends the fixed term tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Tenancy Agreement as being at an end. In such event, the sum of **\$300.00** shall be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty, to cover the administrative costs of re-renting the said premises. The Landlord and Tenant acknowledge and agree that the payment of liquidated damages shall not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the premises and damages as a result of lost rental income due to the Tenant's breach of the terms of this agreement.

Analysis and Conclusion

The tenancy agreement is a contract of adhesion drawn by the landlord. If the tenants wished to rent from the landlord they were obliged to accept the terms of the agreement without modification. The liquidated damage clause must therefore be interpreted having regard to the *Contra Proferentem* doctrine: simply put, this means that any ambiguity in the clause in question must be resolved in the manner most favourable to the tenants.

Although the landlord states in this clause that the payment of liquidated damages will not preclude the landlord from pursuing another remedy available in law, including loss of rental income, this provision ignores the fact that payment of the liquidated damage amount is triggered by the landlord's election to treat the agreement as being at an end, as opposed to its election to affirm the contract and the tenants' obligation to pay rent thereunder despite the tenants' breach of the agreement. The liquidated damage clause requires the landlord to make a choice; if the landlord chooses to claim the

liquidated damage amount it must elect to treat the contract as being at an end. This choice is incompatible with a claim for future loss of rent because the tenants' obligation to pay rent is dependent upon the landlord's affirmation of the contract. In order to hold the tenant accountable for future rent, subject only to the landlord's obligation to mitigate its loss, the landlord must in essence say to the tenants: "I expect you to continue to abide by your agreement to pay rent until the end of the term." I find that the landlord may not end the agreement on the one hand and at the same time demand that the tenants abide by the agreement. Having ended the agreement, there is no longer a remedy available in law or in equity for the payment of future loss of rental income.

At the hearing the landlord's representative elected to affirm the tenancy agreement and abandoned any claim for liquidated damages. I therefore allow the claim for loss of revenue for July and dismiss as abandoned the claim for liquidated damages.

I award the landlord unpaid rent for the month of June in the amount of \$950.00, painting costs as claimed in the amount of \$636.93, \$30.00 cleaning costs and \$9.00 for advertising. The landlord is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,675.93. I order that the landlord retain the deposit and interest of \$475.00 and I grant the landlord an order under section 67 for the balance due of \$1,200.93. This order may be filed in the Small Claims Court and enforced as an order of that Court.