

DECISION

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

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover liquidated damages, loss of income, the costs of cleaning and the filing fee. The landlord also applied to retain the security deposit. 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 any or all of the above? Is the landlord entitled to retain the security deposit in satisfaction of the claim?

Background and Evidence

The tenancy started on October 01, 2009 for a fixed term of one year. Rent was \$1,450.00 per month due on the first of the month. Prior to moving in, the tenant paid a security deposit and pet deposit totalling \$1,450.00. Upon expiry of the term, the parties entered into another fixed term tenancy of one year, which was due to expire on September 30, 2011. Shortly after entering into this agreement, the tenants found a place of their own and on October 31, 2010, they gave the landlord notice to end the tenancy, effective November 30, 2010.

A clause in the tenancy agreement states that liquidated damages in the amount of \$1000.00 apply if the tenant ends the fixed term tenancy before the end of the fixed term. The landlord is claiming \$400.00 towards liquidated damages.

The landlord stated that she advertised the availability of the unit and found a tenant for December 01, 2010. However, the landlord entered into a tenancy agreement with the new tenant for a reduced rent of \$1,350.00. The landlord stated that December is a slow time and it is difficult to find tenants and therefore she allowed a \$100.00 reduction in rent. The tenant stated that she had three prospective tenants who were interested in the unit, but the landlord advised her that she had already found a tenant.

The tenants stated that the landlord could have found a tenant for the full amount of the rent but chose to rent the unit at a discounted rate. The landlord stated that it made more sense to rent for a lower amount rather than have the unit vacant.

The landlord is claiming a loss of income of \$100.00 per month for the balance of the term for a total of \$1,000.00.

A move out inspection was conducted on November 30, 2010. The initial appointment was rescheduled twice to accommodate the tenant. The tenant hired a professional company to clean the carpets. The landlord hired the same company to do the general cleaning of the unit and is claiming the cost of doing so.

The tenant stated that she had cleaned the unit prior to the inspection, but upon arrival she witnessed the landlord's cleaners in the unit, cleaning the kitchen floor. The carpet cleaner hired by the tenant was upstairs finishing the job. The landlord argued that the cleaners had not yet started cleaning prior to the move out inspection, but were there to clean the carpets.

The move out inspection indicates that the condition of the unit was satisfactory. The landlord added comments that state "*\$1000 owed rent (lost rent) cleaning, ~~carpets~~*" The tenant did not agree to deductions off the security deposit and refused to sign the report.

The landlord is claiming the following:

1.	Loss of income	\$1,000.00
2.	Liquidated damages	\$400.00
3.	Cleaning	\$235.20
4.	Filing fee	\$50.00
	Total	\$1,685.20

Analysis

Loss of income \$1,000.00

Based on the testimony of both parties, I find that the landlord did not make sufficient efforts to find a tenant at the full rate of rent. A few days after the tenant gave notice to end the tenancy, the landlord entered into a tenancy agreement for a reduced rent. The tenants stated that they knew of at least three parties who were interested in renting their unit at the full rent, but it was rented before they could make any arrangements. The landlord stated that December is a low season and it is difficult to find a tenant. The tenants disputed this. The landlord did not file any evidence to support her efforts to find a tenant at full rent or data to confirm the seasonal vacancy rate.

Accordingly, I find that the landlord is not entitled to the loss of income that she incurred by renting the unit at a lower rate.

Liquidated Damages \$400.00

Based on the clause in the tenancy agreement, I find that the tenant is responsible for liquidated damages, which is the cost of finding a renter to fulfill the term of a fixed term tenancy. Therefore, I find that the landlord is entitled to \$400.00 for liquidated damages.

Cleaning \$235.20

The landlord stated that the unit was not cleaned to the standards of the landlord. She also stated that even if a unit is spotless, it is the policy of the landlord to have the unit professionally cleaned prior to the arrival of the new tenant. The move out inspection report does not identify any areas that require cleaning. The landlord has not filed any evidence to show that the unit was left in a condition that was unfit for the incoming tenant to occupy. The tenant states that she left the unit in a very clean condition.

Based on the testimony of both parties and the move out inspection report, I find that the tenant left the unit in a clean condition and therefore the landlord must bear the cost of additional cleaning.

Conclusion

Overall the landlord has established a claim for \$400.00 for liquidated damages. Since the landlord proven a small portion of her claim, she must bear the cost of filing this application.

I order that the landlord retain her proven entitlement in the amount of \$400.00 from the security deposit and return to the tenant, the balance of \$1,050.00 within 15 days of receipt of this decision.

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: April 14, 2011.

Residential Tenancy Branch