

DECISION

Dispute Codes: *MNSD, MNDC, FF*

Introduction.

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, liquidated damages, cost of cleaning the carpet and blinds, the filing fee and to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant indicated that he had received the notice of hearing package from the landlord a few days prior to the hearing and therefore did not have sufficient time to prepare his evidence. The landlord testified that she had sent the package by registered mail on June 14, 2011 and filed a tracking slip and a receipt. Therefore, I find that the tenant was notified of the hearing in a timely manner.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages, cost of cleaning and the filing fee? Is the landlord entitled to the return the security deposit?

Background and Evidence

The tenancy started on April 01, 2011 for a fixed term of five months with an end date of August 31, 2011. Rent was \$1,265.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$632.50. The landlord filed a copy of the tenancy agreement which contains a clause that states as follows:

Liquidated Damages

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$632.50 as liquidated damages and not as a penalty.

Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant such as unpaid rent or for damage to the rental unit or residential property.

The tenant has initialled this clause and has signed the tenancy agreement. The tenant testified he was on a short term employment contract and had discussed the possibilities of the contract ending before five months with the landlord. He also testified that during this discussion he entered into a verbal agreement with the landlord that he would be allowed to end the tenancy without penalty, by giving one month's notice. The landlord denied having entered into any verbal agreement with the tenant regarding early termination of the tenancy. She stated that the tenant had rented in the past and because of his clean record, the rental management company made an exception to their policy of terms of a minimum of Twelve months and allowed the tenancy to be for a term of five months.

The tenant stated that he gave the landlord verbal and written notice to end the tenancy approximately 30 days before he moved out. The landlord denied has received any notice – verbal or written. The tenant was unsure of the date of the notice and did not file a copy of the notice into evidence.

The landlord testified that on May 28, 2011 she found an envelope containing keys and fobs that was dropped off at the rental office. A handwritten note on the envelope provided the landlord with the tenant's forwarding address. The landlord filed a copy of this envelope.

The landlord conducted a move out inspection on May 31, 2011 and found the unit to be in a clean and acceptable condition except for the carpets and the blinds. The landlord arranged to have these items professionally cleaned and filed invoices for the cost of doing so. The landlord advertised the unit and was able to find a tenant for June 11, 2011.

The landlord is claiming the following:

1.	Liquidated damages	\$632.50
2.	Loss of income for June 01-10	\$421.70
3.	Carpet cleaning	\$106.40
4.	Cleaning of blinds	\$104.16
5.	Filing fee	\$50.00
	Total	\$1,314.76

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that he had a verbal agreement with the landlord that he would be permitted to end the fixed term tenancy at any time without any monetary consequences. The landlord disputed this and stated that she did not have any such verbal agreement with the tenant. In the absence of evidence to support the tenant's version of events, I find that the tenant is unable to prove that he had a verbal agreement with the landlord that permitted him to end the tenancy at any time without any consequences.

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, 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 this case, a term of the tenancy agreement states that if the tenancy ends prior to the end date of the fixed term tenancy, the tenant will pay liquidated damages of \$632.50 which represents the cost of re-renting the unit. The tenant will also pay any other amounts owed for rent or damage.

The tenant accepted the above term by signing the agreement and initialing the term. Therefore I find that the tenant must pay the liquidated damages to the landlord.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

By ending the tenancy prior to the end date of the fixed term, the tenant breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenancy could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

Section 7(2) of the *Residential Tenancy Act*, states that a landlord who claims compensation for loss that results from the tenant's non compliance with the tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, the landlord advertised the unit and was able to find a renter for June 11, 2011. I find that the landlord made efforts to mitigate her losses and thereby suffered a loss of income for only ten days. I find that the landlord is entitled to her claim of \$421.70 which is the prorated rent for ten days.

The landlord filed photographs and invoices to support her claim for the cost of cleaning the carpet and the blinds. Accordingly, I find that the landlord is entitled to the cost of cleaning these items.

The landlord has proven her case and is therefore entitled to the recovery of the filing fee.

Overall the landlord has established a claim for \$1,314.76. I order that the landlord retain the security deposit of \$632.50 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 \$682.26. 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 in the amount of **\$682.26**.

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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 15, 2011.

Residential Tenancy Branch