



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent only. The tenant did not attend.

The landlord provided documentary evidence confirming the tenant was served with the notice of hearing documents and the Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on November 18, 2011 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the documentary evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for loss or damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on January 24, 2011 for a 1 year fixed term tenancy beginning on February 1, 2011 for a monthly rent of \$720.00 due on the 1st of each month with a security deposit of \$360.00 paid. The tenancy agreement stipulates that should the tenant chose to vacate the

rental unit prior to the end of the fixed term he would be liable for the payment of a liquidated damages charge of \$300.00 for administrative costs;

- A copy of the tenant's notice to end the tenancy dated September 28, 2011 stating he will be moving out by November 1, 2011;
- A copy of a Condition Inspection Report recording the condition of the rental unit at both the start and the end of the tenancy. Specifically at the end of the tenancy on October 31, 2011 the reports states: "Kitchen to be clean oven is clean wipe cupboards". The report includes a line in regard to the start condition of the unit that says "I have inspected the above apartment prior to occupancy and accept it with the conditions noted and agree to leave this apartment in a clean condition upon vacating including carpet and drapery cleaning";
- A copy of a document signed by both parties listing the landlord's intention of what to charge the tenant. In the document the tenant has initialled charges that he agreed with and those he disagreed with. The tenant only agreed with a \$45.00 charge for unit cleaning; and
- A copy of the first page of a tenancy agreement signed by new tenants for this rental unit for a tenancy beginning on November 24, 2011. The document submitted does not include the page showing the date the tenancy agreement was signed by the new tenants.

The landlord's agent testified that the rental unit was rent effective November 24, 2011 to new tenants based on a tenancy agreement signed by the new tenants on November 24, 2011. She further stated that while the unit was advertised, no viewings actually occurred until after the tenant vacated the property.

The landlord seeks the following compensation:

Description	Amount
Liquidated Damages	\$300.00
Carpet Cleaning	\$89.59
Unit Cleaning	\$45.00
Lost Rent for November 2011	\$552.00
Total	\$986.59

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Residential Tenancy Policy Guideline #4 defines a liquidated damages clause as 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 upon 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 unenforceable.

I accept the tenancy agreement stipulated the requirement for liquidated damages should the tenant leave prior to the fixed term and that the charges for these damages are a genuine pre estimate of the costs to re-rent the unit. I find the landlord is entitled to liquated damages.

As to carpet cleaning, I find the clause in the Condition Inspection Report is not clear enough to require the tenant pay for steam cleaning; shampooing or any other type of cleaning and I find the Condition Inspection Report indicates there were no problems with the carpeting. For these reasons, I dismiss this portion of the landlord's Application.

I accept the tenant acknowledged in writing that the landlord is entitled to the \$45.00 compensation for cleaning the rental unit.

Section 45 states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date that is, among other things, not earlier than the date specified in the tenancy agreement as the end of the tenancy. As such, the tenant remains responsible for the payment of rent until the unit is re-rented.

I also accept that the landlord took reasonable steps to re-rent the unit and mitigated any potential loss by entering into a new tenancy agreement with new tenants at the earliest possible time. For these reasons, I find the landlord is entitled to the compensation for the unrented portion of the month of November 2011.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$947.00** comprised of \$300.00 liquidated damages; \$45.00 unit cleaning; \$552.00 lost rent and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$360.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$587.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: February 02, 2012.

Residential Tenancy Branch