Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing was convened in response to the landlord's application under the *Residential Tenancy Act* (the Act) for dispute resolution, seeking to retain the security deposit and a monetary order for loss under the Tenancy Agreement, the Act, or Regulations, as well to recover the filing fee.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord's application was orally amended during the hearing as seeking a monetary order in a revised amount of $650, plus the filing fee.

Issue(s) to be Decided

Has the tenant breached the Act, Regulations or Tenancy Agreement?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The parties agree this tenancy agreement began June 01, 2011 as a 1 (one) year fixed term tenancy ending May 31, 2012. The monthly rent payable was set at $1300 per month. At the outset of the tenancy the landlord collected a security deposit of $650 which the landlord retains, in part. The tenancy ended when the tenant vacated earlier than the end of the fixed term contract, on November 30, 2011. At the end of the tenancy the parties agreed to a deduction from the security deposit in the amount of $85 for carpet cleaning and the landlord now seeks to apply the balance of the security

deposit to their claim for the *liquidated damages* portion of the contractual Tenancy Agreement. Despite the landlord's accounting figures submitted, the tenant and landlord agree that the tenant has received $115 from the landlord, and that the landlord still holds $535 of the security deposit.

The landlord provided evidence of the signed Tenancy Agreement in which the tenant confirmed by their initials their agreement with the landlord's term claiming *Liquidated Damages* of $650 if the tenant ended the fixed term tenancy early in breach of the contractual Tenancy Agreement.

The landlord testified the rental unit was subsequently re-rented for the month following the tenant vacating, but testified that despite this series of events the landlord incurs costs for which the pre-estimate of those costs (liquidated damages) is intended to cover – and which they must pre-determine at the outset of the tenancy and enter within the contractual Tenancy Agreement. The landlord provided document evidence of how the landlord incurs costs for renting / re-renting the rental unit and how the landlord determines the amount they enter as a pre-estimate. The landlord argues the tenant agreed to the pre-estimate amount.

The tenant argues the landlord's pre-estimate in the contractual Tenancy Agreement is not reasonable given the resulting low vacancy rate, and that the landlord's cost to re-occupy the rental unit at the end of a fixed term tenancy may be no different than when a tenant breaches a fixed term, therefore the landlord should not be allowed an amount for *liquidated damages* beyond the cost of credit checks – which the landlord testified are $12 each.

Analysis

On preponderance of all the evidence, including all oral evidence in this matter, and on a balance of probabilities I have reached a decision as follows.

A Tenancy Agreement is a contract for a tenancy. I find the tenant signed the contractual Tenancy Agreement including confirming their agreement to the landlord's pre-estimate of costs for re-renting the unit in the event the tenant determined to end the contract earlier than the terms afforded by this contract.

I find the tenant ended the contractual Tenancy Agreement early and in doing so breached the provisions within the contract, and Section 45 of the Act, and effectively triggered the landlord's entitlement to claim *Liquidated Damages*. Residential Tenancy Policy Guidelines respecting *Liquidated Damages* states that in order for the landlord's

claim to be enforceable, their claim of Liquidated Damages clause in the contractual Tenancy Agreement must be a *genuine pre-estimate of loss at the time the contract is entered into.* If the clause is determined to be a penalty it will not be enforceable. However, the Policy stipulates that if the *Liquidated Damage* clause is determined to be valid the tenant must pay the stipulated amount in the contract even where eventual actual costs do not amount to the pre-estimate – keeping within the essence of a contract. The landlord claims that *Liquidated Damages* charges are pre-determined and they are intended to compensate them for their time, advertising, showings, administrative costs, and ancillary expenses for resources as a result of an early end to the tenancy in breach of the contractual Tenancy Agreement. I accept the landlord's evidence in this respect and as a result I find the contract's clause respecting *Liquidated Damages* clause is enforceable, and effectively find the landlord's claim is valid.

Therefore, I find that the landlord has established a monetary claim for the *Liquidated Damages* in the amount of $650. I further find that the landlord is entitled to recover their filing fee of $50, for a total entitlement of **$700.** The security deposit will be off-set from the award made herein.

Conclusion

I Order that the landlord retains the security **deposit** they hold of $535, in partial satisfaction of the claim, and I grant the landlord an Order under Section 67 of the Act for the balance due of **$165**. If necessary, this order may be filed in the Small Claims Court and 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 23, 2012

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Residential Tenancy Branch