



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

This hearing dealt with an application by the landlord for money owed or compensation due to damage or loss, to keep all or part of the security deposit, other and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began October 1, 21011 with monthly rent of \$1300.00 and the tenants paid a security deposit of \$650.00; the tenancy has an effective end date of October 1, 2012.

The landlord testified that the tenant broke the fixed term lease and vacated the rental unit March 31, 2012. The landlord stated that the tenant did not attend the move out inspection, did not provide the landlord with a forwarding address, did not pay the 1 month penalty for breaking the lease as noted at #11 of the tenancy agreement. The landlord also stated that the tenant did not steam clean the carpets as required when she vacated.

The landlord stated that they were able to re-rent the suite for May 1, 2012 at a reduce rent but have suffered a loss of rental income for April 2012 due to the tenant breaking the fixed term tenancy. The landlord stated that they also incurred a charge of \$100.00 for steam cleaning of the carpets.

The tenant testified that she spoke to the landlord about breaking the lease and that the landlord had agreed to allow the tenant to give 1 month's notice to vacate. The tenant stated that she had this in a text message but nothing else in writing regarding the lease being broken.

The landlord stated that he had agreed to the fixed term tenancy being broken with 1 month's notice however he never intended to waive the 1 month's rent penalty. The landlord also stated that he could have claimed the loss for renting the unit at a lower rate however the landlord has not claimed included that loss in this application. The landlord also stated that he believed the security to have been forfeited by the tenant because an agent of the tenant's and not the tenant attended the move out inspection and this is not the case.

After some discussion the landlord stated in this hearing that he would only claim the \$1300.00 April 2012 rent and the filing fee.

Analysis

Based on the documentary evidence and testimony of the parties I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for loss.

The landlord has established that they suffered a loss of \$1300.00 in rental income for the month of April 2012. The landlord therefore is entitled to recover this amount because of the loss of rental income and not because of clause 11 of the tenancy agreement which states: *If for any reason, the tenant(s) choose to terminate the tenancy prior to the end of the year term, notice must be provided 60 days prior to and a penalty of one month's rent will be levied.* This clause is not enforceable as the amount noted is a penalty and the terms of this clause are unconscionable.

Residential Tenancy Policy Guideline **4. Liquidated Damages** speaks to:

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.

Accordingly I find that the landlord is entitled to a monetary order for \$1300.00.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$1400.00 in loss and cleaning costs. The landlord is also entitled to recovery of the \$50.00 filing fee. I order

the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$650.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$700.00**.

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: May 30, 2012

Residential Tenancy Branch