



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 a Monetary Order for damage to the unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain all of part of the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as proof of service of the hearing documents sent June 14, 2012. The landlord testified that the address used to send the documents was the forwarding address the tenant provided to the landlord via text message. I was satisfied that the tenant has been sufficiently served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for damage to the unit?
2. Has the landlord established an entitlement to recover unpaid rent from the tenant?
3. Has the landlord established an entitlement to recover other damages or loss from the tenant?
4. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy commenced March 1, 2012. The tenant paid a \$445.00 security deposit and a \$25.00 key deposit. The tenant was required to pay rent of \$890.00 on the first day of every month. The tenant failed to pay rent for May 2012 and a 10 Day Notice to End Tenancy for Unpaid Rent was issued May 15, 2012 with an effective date of May 29, 2012.

The landlord testified that a move-out inspection was scheduled for May 29, 2012. The tenant was not present for the inspection so the landlord attempted to reschedule the inspection with the tenant for May 31, 2012 via telephone. On May 31, 2012 the tenant

returned the landlord's call and informed the landlord that he would not be present for the move-out inspection. The landlord completed the move-out inspection report without the tenant present on May 31, 2012.

The tenant returned to the property June 1, 2012 to return the keys to the caretaker but declined to complete the outgoing paperwork.

The landlord is seeking to recover the following amounts from the tenant:

Carpet cleaning	\$ 100.00
Liquidated damages	300.00
Unpaid Rent – May 2012	890.00
Late charge – May 2012	25.00
Loss of Rent – June 2012	890.00
Loss of Rent – July 2012	890.00
Less: credit on laundry card	<u>(3.60)</u>
Total Claim	\$ 3,191.40

The landlord provided a copy of the tenancy agreement which provides for a liquidated damages clause of \$300.00 and a provision for late fees in the amount of \$25.00.

In support of the landlord's claims for carpet cleaning, the landlord testified that the tenant smoked in the unit.

The landlord testified that the unit remains vacant. The landlord attributes the vacancy to a higher than normal vacancy rate due to the summer slow-down and the recent departure of military personnel who often rent in the area. The landlord has been posting its available units online, on signs, and offers incentives to prospective tenants.

As evidence for this proceeding the landlord provided copies of: the tenancy agreement; the 10 Day Notice; the condition inspection reports; carpet cleaning invoice; laundry card statement; written statement of the caretaker; and, registered mail receipt.

Analysis

A tenant is required to pay rent when due under the terms of their tenancy agreement. Upon consideration of the evidence before me, I am satisfied the tenant failed to pay rent to the landlord for the month of May 2012 and the landlord is entitled to recover that amount from the tenant.

Upon review of the tenancy agreement I find there to be a valid provision for the tenant to pay late fees. Since the rent was not paid on time for the month of May 2012 I find the landlord is entitled to recover the permissible amount of \$25.00 from the tenant.

Residential Tenancy Policy Guideline 4 provides for liquidated damages. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable pre-estimate of the cost to re-rent and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$300.00 from the tenant.

A tenant is required to leave a rental unit reasonably clean at the end of the tenancy. Where a tenant smokes in a rental unit Residential Tenancy Policy Guideline 1 provides that a tenant will usually be held responsible for carpet cleaning, regardless of the length of tenancy. Based upon the undisputed evidence before me, I hold the tenant responsible for the carpet cleaning of \$100.00 as claimed by the landlord.

Where a tenant breaches a fixed term tenancy agreement the tenant may be held responsible for the loss of rent for the remainder of the fixed term, provided the landlord takes reasonable steps to minimize the loss. Based upon the landlord's undisputed testimony I am satisfied the landlord has been taking reasonable action to re-rent the unit. Therefore, I grant the landlord's request to recover the loss of rent for the months of June and July 2012.

As the laundry card credit is to the tenant's benefit I have not further analyzed this item and it is offset against the amounts owed to the landlord.

In summary, the landlord has established an entitlement to recover all of the amounts claimed. Given the landlord's success with this application I further award the filing fee to the landlord. I authorize the landlord to retain the tenant's security deposit and key deposit in partial satisfaction of the amounts awarded to the landlord. The landlord is provided a Monetary Order for the balance owing, calculated as follows:

Amount claimed and awarded to landlord	\$ 3,191.40
Plus: filing fee	50.00
Less: security deposit	(445.00)
Less: key deposit	<u>(25.00)</u>

Monetary Order for landlord

\$ 2,771.40

The Monetary Order must be served upon the tenant and may be enforced by filing it in Provincial Court (Small Claim).

Conclusion

The landlord has been authorized to retain the tenant's security deposit and key deposit in partial satisfaction of the amounts owed to the landlord. The landlord has been provided a Monetary Order for the balance owing of \$2,771.40 to serve upon the tenant and enforce as necessary.

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: August 23, 2012.

Residential Tenancy Branch