



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation for loss under the Act, an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of filing the application from the tenants.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on June 15, 2012, to the forwarding address provided by the tenants, the tenants did not appear. Filed in evidence is a copy of the tenants forwarding address provided to the landlord.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss under the Act?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of filing their application from the tenants?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement which began on December 1, 2011. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenants.

The landlord claims as follows:

a.	Bailiff fees	\$750.00
b.	Liquidated damages	\$250.00
c.	Cost of filing application	\$50.00
	Total claimed	\$1,050.00

Half of Bailiff fees

The landlord testified on May 22, 2012, a Dispute Resolution Officer granted an order of possession for unpaid rent which was effective two days after service on the tenants. The landlord stated that the tenants did not vacate the rental unit as required by the Act.

The landlord testified on May 29, 2012, she applied and received a writ of possession from the Supreme Court and the bailiffs were required to enforce the Supreme Court writ. The landlord stated she paid \$1,492.59 to the bailiffs to execute the order, however, only seeks compensation in the amount of \$750.00. Filed in evidence is a copy of the bailiff's invoice.

Liquidated damages

The landlord testified under the provision of the tenancy she is entitled to recover liquidated damages to cover the administration costs of re-renting the unit as a result of the tenants breach of the fixed term agreement. The landlord seeks to recover \$250.00 as specified in the agreement. Filed in evidence is a copy of the fixed term tenancy agreement.

Analysis

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

Half of Bailiff fees

The evidence of the landlord was the tenants did not comply with the order of possession issued by a Dispute Resolution Officer on May 22, 2012 and as a result was required to obtain a writ of possession in the Supreme Court, which the bailiffs executed the writ of possession on the tenants. I find the landlord did suffer a loss due to the actions of the tenants violating the Act. While the landlord is entitled to receive the full amount incurred for the bailiff fees the landlord is only requesting \$750.00. Therefore, I grant the landlord compensation for bailiff fees in the amount of **\$750.00**.

Liquidated damages

The evidence of the landlord was the tenants breached the terms of the tenancy agreement by not paying rent and were evicted from the rental unit, as a result breached the fixed term agreement. The tenancy agreement filed in evidence provides a term that the landlord can claim for liquidated damages to cover the administrative cost of re-renting the unit. I find the tenants did violate the agreement and as a result the landlord suffered a loss. Therefore, I grant the landlord compensation for liquidated damages in the amount of **\$250.00**.

I find that the landlord has established a total monetary claim of **\$1,050.00** comprised of the above described amount and the **\$50.00** fee paid for this application.

I order that the landlord retain the deposit and interest of **\$500.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$550.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep a portion of the security deposit in partial satisfaction of the claim and is granted an order for the balance due.

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 14, 2012.

Residential Tenancy Branch