



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on March 1, 2012 which was set to switch to a month to month tenancy after February 28, 2013. Rent was payable on the first of each month in the amount of \$870.00 plus \$50.00 for parking for a total amount of \$920.00. On February 24, 2012 the Tenant paid \$435.00 as the security deposit. The parties attended and signed the move in condition report on March 1, 2012 and they attended the move out inspection on June 30, 2012 however the Tenant refused to sign the report. On May 5, 2012 the Tenant provided the Landlord written notice to end the tenancy effective June 30, 2012.

The Landlord submitted that he wished to reduce the amount of his monetary claim which included the following:

- A) **\$607.75** for loss of July 2012 rent. The unit was re-rented as of July 20, 2012 for \$880.00 per month, without parking, and the new tenant paid \$312.25 partial rent for July 2012. He is seeking the difference between the amount this Tenant would have paid (\$920.00) and the amount he received from the new tenant of \$312.25. He stated he began to advertise the unit for rent on the internet sometime in June 2012 and he had a sign outside of the building indicating he had a suite for rent.
- B) **\$280.00** for lost rental income for the remaining 7 months of the fixed term tenancy agreement which is \$40.00 x 7 months which is the difference between what this Tenant would have paid (\$920.00) minus the \$880.00 his new tenant is paying.
- C) **\$1,110.00** for costs incurred to re-rent the unit including doing paperwork, dealing with the Tenant and his correspondence, for \$790.00, plus the filing fee of \$100.00, plus \$210.00 to clean the drapes, and \$40.00 for postage to the United States. The Landlord confirmed he did not submit receipts for the cleaning of the drapes or for the U.S. postage. He argued that the \$790.00 requested for his time being claimed is inclusive of the \$435.00 liquidated damages agreed to in the tenancy agreement. He argued that should be entitled to claim the higher amount as this was the actual cost to re-rent the unit.

The Tenant disputed all of the items being claimed by the Landlord stating that the Landlord did not act in a reasonable amount of time to re-rent the unit. He submitted that the Landlord did not advertise on the internet until the end of June 2012 and that the sign outside of the building was for a 1 bedroom unit not a bachelor suite which his unit was. He submitted that he began to advertise the unit as soon as possible in hopes to find a tenant for the Landlord to limit his responsibility to the lease. He argued that he showed the unit several times and confirmed he was not able to find a new tenant before he left at the end of June 2012.

The Tenant acknowledged that he had signed the tenancy agreement agreeing to liquidated damages however he is of the opinion that the liquidated damages is a penalty because the Landlord is now claiming additional costs for the time he spent answering the Tenant's correspondence and showing the unit.

The Tenant asserted that he should not have to pay the difference of \$280.00 for seven months that the Landlord is not collecting parking fees. He noted how the Landlord

rented the unit for more money each month therefore he should not be penalized for the new tenant not having a vehicle to park.

The Tenant pointed to the move out condition report form where the Landlord had originally wrote the cost for drapery cleaning as \$160.00. He submitted that the Landlord changed the amount to \$210.00 after the inspection and argued that he was never given a copy of a receipt to prove the work was actually done.

Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy agreement by providing the landlord with written notice to end the tenancy on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Based on the aforementioned I find that the Tenant breached section 45 (2) of the Act by ending his tenancy prior to the end of the fixed term. The tenancy agreement stipulates the Tenant will pay rent of \$870.00 plus \$50.00 parking for a total amount of \$920.00 due on the first of each month for the period from March 1, 2012 to February 28, 2013. The Tenant ended the tenancy as of June 30, 2012.

The Landlord acknowledged that he began to advertise the unit for rent in June 2012. I accept the Tenant's submission that he advertised the unit immediately in hopes of assisting the Landlord to find a new tenant. However the Tenant was not successful in finding a replacement tenant before he left at the end of June 2012.

I accept the evidence before me which indicates the Landlord was able to re-rent the unit as of July 20, 2012 for \$880.00 per month and that the new tenant paid \$312.25 as prorated rent for July 2012. Notwithstanding the tenant's argument that he should not be penalized for the Landlord renting the unit to someone who does not require parking, I find the Landlord took reasonable steps in minimizing his total loss by accepting the new tenant as soon as possible for an overall difference of \$40.00 per month.

I make this finding in part because the Tenant submitted that despite his attempts he was not able to find a replacement tenant prior to the end of June 2012. Therefore, I find the Landlord was wise to secure a new tenant when he could to minimize the total loss.

Based on the foregoing, I find the Landlord has met the burden of proof in establishing his claim for loss of rent of **\$887.75** (\$607.75 July 2012 + \$40.00 x 7 months August 2012 to February 28, 2013).

The Landlord has sought \$1,110.00 which includes costs for drapery cleaning, postage, and the Landlord's time for conducting business to re-rent the unit which he submitted was inclusive of the \$435.00 liquidated damages provided for in the tenancy agreement.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree, in advance, what the damages payable are in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss that would be incurred to re-rent the unit, such as managing correspondence, paperwork, viewings of the unit, and credit checks of potential tenants.

Both parties acknowledged that the tenancy agreement provided a liquidated damages clause whereby the Tenant would be required to pay the Landlord an amount of \$435.00 if he ends the fixed term prior to the end of the term. Upon review of the agreement I find the amount to be reasonable and that the clause does not constitute a penalty.

When parties enter into a written agreement that includes a liquidated damages clause a landlord cannot simply ignore that agreement in favor of claiming a higher amount. Therefore I dismiss the Landlord's claim for his time and mail costs in dealing with this matter and approve his request for liquidated damages in the amount of **\$435.00**.

The Landlord has also claimed a loss for drapery cleaning of \$210.00 which is higher than the \$160.00 noted on the condition inspection report form. The claim was not supported by evidence, such as a receipt proving payment for the service. Based on the

aforementioned, I find there to be insufficient evidence to prove the claim therefore I dismiss this amount.

The Landlord has been partially successful which his application, therefore I award partial recovery of the \$100.00 filing fee in the amount of **\$50.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Loss of Rent	\$ 887.75
Liquidated damages	435.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,372.75
LESS: Security Deposit \$435.00 + Interest 0.00	<u>-435.00</u>
Offset amount due to the Landlord	<u>\$ 937.75</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$937.75**. This Order is legally binding and must be served upon the Tenant.

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: September 25, 2012.

Residential Tenancy Branch