



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNSD

Introduction

This hearing dealt with an application by the landlord a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to a monetary order for cleaning and repair costs?

Background and Evidence

The tenancy began on or about October 1, 2011 for a fixed term of one year. Rent in the amount of \$1550.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$775.00.

The landlord gave the following testimony; on January 25, 2012 the tenant's notified the landlord that they would be moving out as of January 31, 2012, the landlord was unable to rent the unit until March 1, 2012, the landlord had to conduct the following; paint the unit, clean the unit, replace locks and keys, and replace fireplace remote, the landlord is seeking the recovery of these costs as well as the loss of rent for the month of February and the equivalent of another months' rent for liquidated damages.

The tenant gave the following testimony; had made several attempts to "get out of the lease" but was unable to come to an agreement with the landlord, moved only due to an illness, never wanted to move out but were fearful of falling behind in rent and not

wishing to cause the landlord any problem, feels the unit was clean when she moved out and that the liquidated damages is unfair.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The landlord submitted documentary evidence for this hearing, the tenant did not.

As the landlord is the sole applicant in this matter I will address each of their claims and my findings as follows;

First Claim – The landlord is seeking the loss of rent for the month of February in the amount of \$1550.00. The tenant does not dispute this claim and acknowledges the debt. I find the landlord is entitled to \$1550.00.

Second Claim- The landlord is seeking liquidated damages in the amount of \$1550.00. The tenant disputes this claim as she feels its penalizing the tenant's twice for the same issue. The landlord is relying on a clause in the tenancy agreement that allows the landlord to seek this cost. Section 4 of the *Residential Tenancy Policy Guideline* deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of 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 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. In considering whether the sum is a

penalty or liquidated damages, a Dispute Resolution Officer will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. In this case, I find the sum of \$1550.00 to be extravagant when compared to what it would cost the landlord to re rent the unit. Clauses of this nature can also be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. I find the amount of the clause to be invalid and I therefore interpret the liquidated damages provision to be a penalty and unenforceable. Accordingly, the landlord's claim for \$1550.00 is dismissed.

Third Claim- The landlord is seeking \$680.40 for painting the unit. The tenant acknowledged that the unit was brand new when she moved in and agrees with this claim. The landlord provided a receipt to support their claim. I find the landlord is entitled to \$680.40.

Fourth Claim – The landlord is seeking \$75.00 for the replacement of locks and keys. The tenant did not dispute this claim and acknowledged that she didn't return the keys and that the lock was damaged. The landlord provided a receipt to support their claim. I find the landlord is entitled to \$75.00.

Fifth Claim- The landlord is seeking \$56.00 for the replacement of a fireplace remote. The tenant was not sure what happened to the remote and was unable to provide any information. The landlord provided a receipt to support their claim. I find the landlord is entitled to \$56.00.

Sixth Claim – The landlord is seeking \$120.00 for cleaning the unit. The tenant adamantly disputes this claim as they feel they left the unit very clean. The landlord submitted a condition inspection report that did not reflect their claims of a messy or dirty suite nor did they provide a receipt to support the cost sought. Based on the insufficient evidence before me I dismiss this portion of the landlords claim.

In summary, the landlord has been successful in the following claims:

Loss of Rent for February 2012	\$1550.00
Fireplace Remote	\$56.00
Lock Replacement	\$75.00
Filing Fee	\$ 50.00
	\$
Total:	\$2411.40

As for the monetary order, I find that the landlord has established a claim for \$2411.40. I order that the landlord retain the \$775.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of 1636.40. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$1636.40. The landlord may retain the security deposit.

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: October 30, 2012.

Residential Tenancy Branch