



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for compensation for loss and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for loss revenue?

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

Background and Evidence

The parties entered into a fixed term tenancy which began on April 1, 2012 and was to expire on December 31, 2013. Rent in the amount of \$1,700.00 and \$50.00 parking were payable on the first of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid by the tenants. The tenancy ended on October 27, 2012. Filed in evidence

The landlord claims as follows:

a.	Unpaid rent for October and NSF fee, and late fee	\$1,750.00
b.	Parking	\$ 250.00
c.	Loss of revenue for rent for 4 months	\$6,800.00
d.	Liquidated damages	\$ 750.00
e.	Filing fee	\$ 100.00
	Total claimed	\$9,850.00

The landlord's agent testified the tenants did not pay rent for October 2012. The landlord's agent stated due to the tenants violating the tenancy agreement, the tenants were served with a ten day notice to end tenancy for unpaid rent and the tenants

vacated the unit on October 27, 2012. The landlord seeks to recover unpaid rent for October 2012, the NSF fee for the returned cheque, late fee in the amount of \$1,750.00.

The landlord's agent testified they seek to recover parking fees in the amount of \$250.00.

The landlord's agent testified that they immediately advertised the rental unit in several local popular websites and continue advertising until the unit was rented. The landlord's agent stated they showed the unit on many occasions, however, they were unable to find a new tenant. The landlord's agent stated to further minimize the loss they significantly lowered the rent and on January 11, 2013, they were able to find a new tenant and the tenancy will commence on March 1, 2013. The landlord seeks to recover loss of revenue in the amount of \$6,800.00.

The landlord's agent testified that they are also seeking to recover the liquidated damages as set out in the tenancy agreement for the administrative cost of re-renting the unit. The landlord seeks to recover liquidated damages in the amount of \$750.00.

The tenant acknowledges the cheque he provided to the landlord for October 2012, rent was returned for insufficient funds. The tenant did not dispute any of the landlord's claim.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove.

Unpaid rent for October and NSF fee, and late fee

In this case, the parties agreed they entered into a fixed term tenancy that was to end on December 31, 2013. The tenant acknowledged the cheque he issued for October 2012, rent was returned for insufficient funds. Therefore, I find the tenants breached the tenancy agreement and Act, when they failed to pay rent. The landlord is entitled to recover unpaid rent, NSF fee, and late charge in the amount of **\$1,750.00**.

Parking

In this case, the Parking Stall License Agreement filed in evidence is a service that was separate from any rights arising out the tenancy and was provided under a separate agreement. Therefore, I decline to award any cost, due to lack of jurisdiction.

Loss of revenue for rent for 4 months

In this case, the tenants' failure to pay rent resulted in the tenants being evicted from the rental unit, further breaching the fixed term agreement. The landlord suffered a loss of revenue for November 2012, December, 2012, January 2013 and February 2013.

Section 7 of the Residential Tenancy Act states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

*(2) A landlord or tenant **who claims compensation for damage or loss** that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.***

[Emphasis added.]

In this case, the evidence of the landlord's agent was that they immediately advertised the unit on several popular websites and continued those advertisements until a new tenant was found in January, however, the new tenancy will not commence until March 1, 2013 and rent was significantly lowered. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss revenue in the amount of **\$6,800.00**.

Liquidated damages

The tenancy agreement filed in evidence provides a liquidated damage clause, which is a predetermined amount agreed to by the parties for administrative cost of re-renting the unit, should the tenancy agreement be breached. As I have previously found the tenants have breached the tenancy, I find the landlord is entitled to recover liquidated damages in the amount of **\$750.00**.

I find that the landlord has established a total monetary claim of **\$9,400.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit (\$850.00) and the pet damage deposit (\$850.00) in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$7,700.00**.

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 the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal 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: January 31, 2013

Residential Tenancy Branch

