



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for unpaid rent – Section 67;
3. A Monetary Order for compensation for loss – Section 67; and
4. An Order to retain the security deposit - Section 38.

I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend the Hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on September 1, 2012 on a fixed term to March 31, 2013. The Tenant failed to give a month's notice and moved out of the unit on October 9, 2012. The Tenant's rent cheque for October was returned NSF. Rent of \$575.00 was payable monthly and at the outset of the tenancy the Landlord collected \$287.50 as a security deposit.

The Landlord advertised the unit continuously on various sites and in a local paper from October 25, 2012 until the unit was re-rented for January 1, 2013. The Landlord claims the following:

- \$575.00 for unpaid rent for October 2012;
- \$25.00 for an NSF fee for returned October 2012 rent cheque;
- \$75.00 for unpaid utilities for each month of September, October, November and December 2012, as provided in the tenancy agreement;
- \$1,150.00 for lost rental income for November and December 2012;
- \$250.00 for liquidated damages as provided in the tenancy agreement;
- \$64.94 for repairs to the unit; and
- \$89.60 for carpet cleaning.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the undisputed evidence of the Landlord, I find that the Tenant failed to pay October 2012 rent by issuing a cheque with insufficient funds to cover the amount of the cheque and that the Landlord is therefore entitled to **\$575.00** for October 2012 rent and **\$25.00** for the cost of the NSF charge. Further based on the undisputed evidence of the Landlord, I find that the Tenant left the unit with damages and that the Landlord has substantiated an entitlement of **\$64.94**.

Section 37 of the Act provides that a tenant must leave a unit reasonably clean except for reasonable wear and tear. The policy guidelines in relation to the obligations of the tenant at move-out indicates that carpet cleaning would be required after a year of tenancy. AS this tenancy did not last longer than a month, I find that the Tenant is not

responsible for professional cleaning to the carpet as this would be cleaning to a standard higher than contemplated under the Act. I therefore dismiss this claim.

Clause 5 of the tenancy agreement provides that liquidated damages of \$250.00 are payable if the tenant ends the tenancy before the fixed term date. This section provides that the sum is an agreed pre-estimate of the landlord's cost of re-renting the unit and must be paid in addition to other amounts owed such as unpaid rents. "Liquidated damages" is a term that recognizes a legal principle where, by agreement, one party accepts a sum of money in exchange for the other party ending a contract prior to its end date and no other monies are payable pursuant to the contract. In order to give effect to the principle of liquidated damages, I find that the liquidated damages clause as set out in the tenancy agreement reflects the Landlord's agreement that the sum of money to re-rent the unit will be accepted where either party terminates the agreement. To further give effect to the principle of liquidated damages, I find that this clause does not allow a landlord to pursue additional monies, such as lost rental income, for the breach of the fixed term tenancy but does allow the landlord to pursue other unrelated damages such as unpaid rents. I therefore find that the Landlord has substantiated an entitlement to **\$250.00** in liquidated damages and I dismiss the Landlord's claim for lost rental income.

As the tenancy ended in October 2012, I find that the Landlord is not entitled to any sums that may accrue after this date, including utilities and that the Landlord has therefore substantiated an entitlement only to utilities for September and October 2012 in the amount of **\$150.00**. I dismiss the remainder of the claim for utilities.

The Landlord has a total monetary entitlement of **\$1,064.94**. Setting the security deposit of **\$287.50** plus zero interest off this entitlement leaves **\$777.44** owing by the Tenant to the Landlord.

Conclusion

I **order** that the Landlord retain the **deposit** and interest of \$287.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$777.44**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 07, 2013

Residential Tenancy Branch

