



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOPHIE INVESTMENTS INC  
and [tenant name suppressed to protect privacy]

## **Decision**

**Dispute Codes:** MNSD, MNDC, MNR, MND, FF

## **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent, liquidated damages as agreed-upon under the tenancy agreement, cleaning of the suite and carpet, new pinning of the lock and garbage removal. The landlord was seeking to retain the security deposit in satisfaction of the claim.

Despite being served by registered mail sent on January 10, 2013, as confirmed by the Canada Post tracking number, the respondent did not appear and the hearing proceeded in their absence.

## **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss.

## **Background and Evidence**

The landlord testified that the fixed-term tenancy began on May 21, 2012 and was to expire on April 30, 2013. The rent was \$1,795.00 per month and a security deposit of \$897.50 was paid. The tenant gave written notice to end the tenancy effective November 30, 2012. However, according to the landlord, the tenant remained in the unit into December 2012 and did not pay rent for the month of December, for which the landlord is claiming \$1,795.00. In addition, the landlord is claiming a late fee of \$50.00 pursuant to a term in the tenancy agreement.

The landlord submitted into evidence a copy of the tenancy agreement, a copy of the tenant's notice to end tenancy, a form signed by the tenant agreeing to be responsible for the liquidated damages, proof of service, copies of move-in and move-out condition inspection reports and photographs of the unit. The landlord also submitted copies of invoices for carpet cleaning, general cleaning, the "key lock" and garbage removal.

The landlord testified that, although the tenants were offered more than one opportunity to accept or reschedule the move out condition inspection, they refused to cooperate and the inspection was conducted in the tenant's absence. The landlord testified that the unit was left in an unclean condition, requiring \$362.50 for general cleaning, \$123.20 for carpet cleaning and \$168.00 for garbage removal. The landlord testified that, because the key was not returned when the tenant moved out, the landlord spent \$70.00 to change the lock pins. The total claim to prepare the unit for re-rental is \$723.70.

The landlord testified that the tenancy agreement contained a liquidated damages term, which was agreed to by the tenant, requiring payment of \$1,500.00, if the tenancy agreement is terminated by the tenant prior to the expiry date. This payment is also being claimed.

The total monetary claim is for \$4,068.70 plus reimbursement for the \$50.00 cost of filing.

### **Analysis**

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
  - (i) are required or prohibited under this Act, or
  - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement.

With respect to \$1,795.00 rent owed for December 2012, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. In this instance, I find that the tenant did not pay the rent when it was due. Accordingly, I find that the landlord is entitled to \$1,795.00 rent owed for the month of December 2012.

In regard to the claim for the \$50.00 late fee, which is based on an agreed-upon term in the tenancy agreement, I find that late fees are governed by section 7(1) (d) of the

*Residential Tenancy Regulation.* This section of the Act provides that a landlord can charge a fee of *not more than* \$25.00 for late payment of rent, or a returned cheque by a financial institution.

Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations, and Section 5 of the Act states that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulations is of no force or effect.

In this instance, the Landlord has submitted a copy of the tenancy agreement into evidence showing that the parties had both agreed to that the tenant would be responsible to pay a late fee of \$50.00 as a term of the tenancy agreement. However, because the amount shown in the contract exceeds that permitted under the Act, I find that the portion of the landlord's application claiming the late fee must be dismissed.

With respect to the landlord's claim for liquidated damages, I find that the parties had signed a liquidated damages clause in the tenancy agreement requiring that the tenant pay \$1,500.00 liquidated damages, in the event that the tenancy was terminated prior to the expiry of the term. On this basis, I find that the landlord is entitled to be compensated \$1,500.00 by the tenant as the tenancy agreement was prematurely ended by the tenant prior to the expiry date of the contract.

In regard to the landlord's claim for cleaning and disposal, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the tenant of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

Section 37(2) of the Act states, upon vacating a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear. I accept the landlord's testimony that the unit required general cleaning, at a cost of \$362.50, carpet cleaning costing \$123.20 and garbage removal costing \$168.00. Accordingly I find the landlord is entitled to compensation in the amount of \$653.70.

In regard to the landlord's claim for the cost of repining the lock, I find that section 37 of the Act requires the tenant give the landlord all the keys in the possession or control of the tenant at the end of the tenancy. I accept the landlord's testimony that this did not occur. However, Section 25 of the Act places the responsibility on the landlord to pay all costs for changing locks at the beginning, or end of each tenancy. For this reason, I find that the landlord is not entitled to be reimbursed for the costs associated with changing the locks on the rental suite.

Based on the evidence before me I find that the landlord is entitled to total compensation of \$3,998.70, comprised of \$1,795.00 in rent owed for December 2012, \$1,500.00 for liquidated damages owed under the tenancy agreement, \$653.70 in cleaning and garbage removal costs and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$897.50 security deposit in partial satisfaction of the claim leaving \$3,101.20 still outstanding.

I hereby grant a monetary order in favour of the landlord in the amount of \$3,101.20. This order must be served on the landlord and may be enforced in small claims court if necessary

### **Conclusion**

The landlord's application is partly successful and the landlord is granted a monetary order for rent, damages and the cost of the application.

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: March 21, 2013

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Residential Tenancy Branch