



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Connaught Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 05, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on November 01, 2012 for a fixed term which was not due to expire until October 31, 2013. Rent for this unit was \$940.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$470.00 on October 05, 2012. The tenant attended the move in and the move out condition inspections with the landlord and provided a forwarding address on the move out report on January 21, 2013.

The landlord testifies that the tenant gave notice to end the tenancy on December 31, 2012. This was effective on January 31, 2013. The tenant also gave the landlord other pieces of paper giving Notice for January 15, 2013 due to job relocation. The landlord testifies that the tenant vacated the rental unit on January 21, 2013. The landlord testifies that there is a lease break fee charged which is documented in the tenancy agreement of \$350.00. The landlord agreed to look at not changing the tenant that fee for administrative costs in re-renting the unit if the tenant's employer provided a letter stating that the tenant's job required the tenant to relocate more than 50 miles from the rental unit. This letter was to be provided by January 15, 2013 and the landlord received the letter on January 11, 2013. However to date the landlord has determined by calling the tenants employer that the tenant has not relocated to that job. The landlord therefore seeks to recover the lease break fee from the tenant.

The landlord testifies that the tenant failed to pay rent for January of \$940.00. The landlord seeks to recover this amount from the tenant. The landlord testifies that they

started to advertise the tenant's rental unit in the newspaper and on two internet sites on the first business day after the landlord received the tenant's notice. The unit was not re-rented until March 01, 2013. The landlord therefore seeks to amend their application to recover a loss of rental income for February from the tenant to the amount of \$940.00.

The landlord testifies that the tenancy agreement states that a late fee of \$25.00 will be charged for any month that rent is late. The landlord seeks to recover this late fee from the tenant for January, 2013.

The landlord testifies that the tenant did attempt to clean the rental unit at the end of the tenancy however it was determined on the move out inspection that the unit was not cleaned to a reasonable standard. Additional cleaned was required to the walls, the windows and window tracks, the cupboards, the outside area, and garbage removal. The landlord's cleaners have provided an invoice showing the areas cleaned for 7.5 hours at \$20.00 per hour. The landlord therefore seeks to recover the sum of \$150.00.

The landlord testifies that the tenant left the carpets stained in the living room and one bedroom. The carpets required professional cleaning however the stains could not be removed. The landlord seeks to recover the sum of \$140.00 for this work and has provided a receipt from the carpet cleaning company.

The landlord testifies that the tenant damaged a window covering in the kitchen. This covering appeared to have been splashed with a bleach like substance and the stains could not be removed by cleaning. The landlord seeks to recover the cost of replacement for this window covering of \$30.00. The landlord has not provided a receipt for this in evidence.

The landlord testifies that there was some damage to the dry wall under the drain holes where the tenant's washing machine had been located. This area of drywall had to be

removed and replaced as it was wet. The landlord seeks to recover the cost for this work of \$60.00 and has provided a receipt in evidence.

The landlord testifies that the tenant was provided with two keys at the start of the tenancy however only one key was returned to the landlord at the end of the tenancy. The landlord had to have the deadbolt rekeyed at a cost of \$35.00 and seeks to recover this from the tenant. A receipt has been provided in evidence.

The landlord requests an order to keep the security deposit to offset against the charges applied to the tenant. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord attending the hearing

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied that the tenant failed to pay rent for January, 2013 and therefore I find in favour of the landlords claim for **\$940.00**. Furthermore I find the tenancy agreement informs the tenant that a late fee of \$25.00 will be charged in any month that rent is late. I therefore find in favor of the landlords claim to recover late fees of **\$25.00** for January, 2013.

With regard to the landlords claim for a loss of income for February; the tenancy was a fixed term tenancy which was not due to expire until October 31, 2013. The tenant ended the tenancy before the end of this term and the landlord was unable to re-rent the

unit until March 01, 2013. I therefore find the landlord has established their claim for a loss of rental income for February, 2013 to the amount of **\$940.00** and I will allow the landlord to amend this claim as the tenant was aware that this was a fixed term tenancy and was responsible for the rent until the end of the term or for the period before the landlord re-rented the unit.

With regards to the lease break fee of **\$350.00**. The Residential Tenancy Policy Guidelines # 4 refers to these fees as liquidated damages and states, in part, 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. I have considered the landlords position in this matter and find the landlord did offer to cancel this fee if the tenant was able to show that the tenant was being relocated to a job over 50 miles from the rental unit. The landlord has testified that the tenants employer did provide a letter stating the tenant was being relocated however the landlord testified that they determined after the tenant moved out that the tenant has never taken this position offered with that employer. I therefore find the amount charged to the tenant is a reasonable amount for liquidated damages in re-renting the unit and as such the landlord is entitled to recover this amount from the tenant.

With regard to the landlords claim for damage to the unit site and property; in this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have considered the evidence provided in the form of the condition inspection reports, the invoices and receipts and the landlords testimony; From this evidence it is clear that

the tenant failed to leave the rental unit reasonably clean at the end of the tenancy, the tenant failed to clean the carpets which were left stained, the tenant failed to repair the drywall damage and the tenant failed to leave two keys with the landlord. I am not satisfied with the actual amount claimed for the replacement window coverings as the landlord has not provided a receipt for the replacements costs of these. This section will therefore be dismissed from the landlords claim. The reminder of the claim for damages is upheld as the landlord has met the burden of proof. The landlord will receive a monetary award for the following amounts:

Cleaning - \$150.00

Carpet cleaning - \$140.00

Repair to drywall - \$60.00

Rekeying locks - \$35.00

Total amount due - **\$385.00**

I order the landlord to keep the tenants security deposit of **\$470.00** in partial satisfaction of this claim pursuant to s. 38(4)(b) of the *Act*. I further find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for January, 2013	\$940.00
Late fee for January, 2013	\$25.00
Loss of rental income for February, 2013	\$940.00
Liquidated damages	\$350.00
Damages and cleaning	\$385.00
Subtotal	\$2640.00
Less Security deposit	(-\$470.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$2,220.00

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,220.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 26, 2013

Residential Tenancy Branch

