



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, FF

### **Introduction:**

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

It is readily apparent from information on the Application for Dispute Resolution that the Landlord is also seeking compensation for late fees; for liquidated damages, and for the cost of removing property from the rental unit at the end of the tenancy, and those claims will be considered during these proceedings.

The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at his place of business, via registered mail. The Landlord submitted Canada Post documentation that shows the Tenant signed for this registered mail on March 20, 2013.

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

Is the Landlord entitled to a monetary Order for unpaid rent, late fees, liquidated damages, and for removing property that was left at the rental unit at the end of the tenancy?

### **Background and Evidence:**

The Landlord stated that this tenancy began on May 15, 2012; that the tenancy agreement required the Tenant to pay monthly rent of \$1,330.00 by the first day of each month; and that the Tenant paid a security deposit of \$650.00. The Landlord submitted a copy of a tenancy agreement which corroborates this testimony.

The Landlord stated that the Tenant gave verbal notice to end the tenancy on September 30, 2012; that the Tenant vacated the rental unit on September 30, 2012;

and that the Tenant paid no rent for August or September of 2012. The Landlord is seeking compensation for unpaid rent, in the amount of \$2,660.00.

The tenancy agreement that was submitted in evidence shows that the Tenant agreed to pay a fee of \$25.00 whenever rent is not paid on time. The Landlord is seeking a \$25.00 fee because rent was not paid when it was due on August 01, 2012 and another \$25.00 fee because rent was not paid when it was due on September 01, 2012.

The Landlord wishes to enforce the liquidated damages clause of the tenancy agreement.

The Landlord stated that the Tenant left three televisions and a shelving unit at the rental unit. He stated that he paid \$20.00 in tipping fees and that he spent about an hour of his own time disposing of the items.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,330.00 by the first day of each month; that the Tenant occupied the rental unit in August and September of 2012; and that the Tenant did not pay any rent for those months. As he is required to pay rent for the time he occupied the rental unit, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$2,660.00 in outstanding rent to the Landlord.

As the tenancy agreement required the Tenant pay a fee of \$25.00 whenever he is late paying rent, and the Tenant did not pay his rent on time in August or September of 2012, I find that he must pay \$50.00 in late fees.

When making a claim for damages to the rental unit the Landlord bears the burden of proving the claim. Proving a claim in damages includes establishing that a damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when he left personal property at the rental unit. In addition to establishing that the Tenant failed to comply with the *Act*, the Landlord must also accurately establish the cost of remedying the breach. In these circumstances I find that the Landlord submitted insufficient evidence to show that he paid a tipping fee of \$20.00 to dispose of the Tenant's personal property. In reaching this conclusion I was strongly influenced by the absence of a receipt, which should have been readily available, that corroborates the claim that it cost \$20.00 to dispose of the property. I therefore decline to award compensation for the tipping fee.

I find that the Landlord is entitled to compensation for the one hour he spent disposing of the property, at an hourly rate of \$25.00, which I find to be reasonable compensation for this type of labour.

The liquidated damages clause in the tenancy agreement stipulates, in part, that the Tenant must pay \$800.00 to the Landlord if the Tenant ends the fixed term tenancy before the end of the fixed term of the agreement. As this is not a fixed term tenancy agreement, I find that the Landlord is not entitled to enforce this term of the tenancy agreement as a result of the Tenant ending the tenancy.

The liquidated damages clause in the tenancy agreement also stipulates, in part, that the Tenant must pay \$800.00 to the Landlord if the Tenant is in breach of the Act or a material term of the tenancy agreement that causes the Landlord to end the tenancy before the end of the term set out in section 4(b) of the tenancy agreement. As there is no end date set out in section 4(b) of the agreement, I find that the Landlord is not entitled to enforce this term of the tenancy agreement. For these reasons, I dismiss the claim for liquidated damages.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,785.00, which is comprised of \$2,660.00 in unpaid rent, \$50.00 in late fees, \$25.00 for disposing of the Tenant's property, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit, in the amount of \$650.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$2,135.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: June 07, 2013

