



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for damage to the unit, site or property; for a Monetary Order for unpaid rent; 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 tenants 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*; served by registered mail on March 15, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants are 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 tenants, 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 damage to the unit?

- Is the landlord entitled to a Monetary Order for a loss of rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that the tenants signed a tenancy agreement to rent this unit on February 13, 2013. The tenancy was due to start on March 01, 2013 for a fixed term tenancy which was due to expire on February 28, 2014. Rent was agreed at \$875.00 per month due on the 1st day of each month. The tenants provided a cheque for their security deposit of \$437.50.

The landlord testifies that later the tenants refused to move into the unit and stated to the landlord that they had gone to a website dated 2010 and the building was noted as having bedbugs. The landlord testifies that neither the building or the unit have bedbugs.

The landlord testifies that the tenants' security deposit cheque was returned by the bank due to insufficient funds (NSF) and there is a clause in the tenancy agreement which informs the tenants a fee of \$25.00 will be charged for NSF cheques. The landlord testifies that there is a clause in the tenancy agreement that states that if the tenants terminate the tenancy prior to the end of the fixed term a fee of \$300.00 is charged for liquidated damages. The landlord testifies that they had to advertise the unit again for rent and it was re-rented for April 01, 2013.

The landlord testifies that they seek to recover a loss of rental income for March of \$875.00; liquidated damages of \$300.00; the NSF fee of \$25.00; and the filing fee of \$50.00. The landlord has not made a monetary claim for damage to the unit, site or property.

The landlord has provided a copy of the tenancy agreement, copies of advertisements to re-rent the unit, a copy of the rent ledger and information for the tenant concerning the charges made, in documentary evidence.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing. Therefore, in the absence of any evidence from the tenants, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

If a tenant enters freely into a tenancy agreement then the tenant is bound to honor the terms of that agreement. In this case this was a fixed term tenancy and although the tenant did not move into the rental unit the tenants did sign the tenancy agreement and are therefore bound by this agreement. The tenants have not appeared at the hearing to present any evidence or testimony that would invalidate the tenancy agreement. I therefore find in favor of the landlords monetary claim for a loss of rental income for March, 2013 to the amount of \$875.00.

The tenancy agreement has a clause which notifies the tenants that they may be subject to a charge of \$300.00 in liquidated damages if they end the tenancy before the end of the fixed term. As the tenant did break the lease and the landlord had to re-advertise the unit for rent then I find the landlord is entitled to recover the amount of \$300.00 in liquidated damages from the tenants

I further find the tenancy agreement informs the tenants that a charge of \$25.00 will be incurred for any cheques issued that are NSF. Therefore I find the landlord is entitled to recover the amount of \$25.00 from the tenants due to the NSF security deposit cheque.

The landlord has presented no evidence or testimony concerning damage to the rental unit and this section of their claim is therefore dismissed.

As the landlord has been successful with this claim the landlord is also entitled to recover the \$50.00 filing fee from the tenants. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent	\$875.00
Liquidated damages	\$300.00
NSF fee	\$25.00
Filing fee	\$50.00
Total amount due to the landlord	\$1250.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$1250.00 pursuant to s. 67 and 72(1) of the *Act*. The order must be served on the respondents 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: June 07, 2013

Residential Tenancy Branch

