



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

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 unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. A Monetary Order for damages to the unit – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

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?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 15, 2012 on a fixed term to May 31, 2013. The Tenant gave notice on March 19, 2013 to end the tenancy on March 31, 2013 and did move out on that date. Rent of \$1,550.00 was payable monthly and at the onset of the tenancy the Landlord collected \$775.00 as a security deposit and \$75.00 as a key deposit. The

Tenant signed an agreement for the amount of \$3,412.90 to be deducted from their security and key deposits. This amount was agreed to for cleaning costs, carpet cleaning, drape cleaning, unpaid March and April 2013 rent, liquidated damages and included a credit for a smart card balance. The Landlord claims this amount plus lost rental income for May 2013.

The Landlord advertised the unit as soon as receiving the Tenant's notice to end the tenancy and filled the unit by June 15, 2013. The Landlord states that shortly after advertising the unit, the market dropped off and that the inability to rent the unit sooner was due to a combination of the Tenant's breach and the market.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. 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. Given the Tenant's lack of full notice to end the tenancy and considering that the Tenant agreed to the costs, I find that the Landlord has substantiated an entitlement to **\$3,412.90**. Noting that the time between the first advertisement of the unit and the date of the next tenancy to be significantly lengthy and considering the Landlord's evidence of market drop, I find that the Landlord has not substantiated, on a balance of probabilities, that the lost rental income for May 2013 arose as a result of any act or negligence by the Tenant and I dismiss this claim.

As the Landlord has been largely successful with the application, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,462.90**. Setting the combined security deposit of **\$775.00** plus zero interest and the key deposit of **\$75.00** off the entitlement leaves **\$2,612.90** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security and key deposit plus interest in the amount of \$850.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$2,612.90**. 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: July 31, 2013

Residential Tenancy Branch

