



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOME LIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for loss of rent; liquidated damages; damage and cleaning costs; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, to show the hearing documents were sent to the tenant on April 12, 2013. The address used to serve the tenant is the tenant's forwarding address and appears on the move-out inspection report. I was satisfied the tenant was sufficiently served in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenant paid a security deposit of \$400.00 on July 1, 2009. The landlord and tenant had multiple tenancy agreements with the last one commencing June 1, 2012 for a fixed term set to expire in June 2013. The most recent tenancy agreement provides that the tenant would pay rent of \$853.00 on the 1st day of every month. The tenancy agreement also contains an "early termination" clause requiring the tenant to pay rent until the unit is re-rented and 50% of the monthly rent to compensate the landlord for costs to re-rent the unit should the tenant end the tenancy early.

On March 16, 2013 the landlord received an email from the tenant indicating she would be ending the tenancy early. The tenant participated in a move-out inspection with the landlord's agent on March 30, 2013 and an inspection report was prepared. The landlord mailed the move-out inspection report to the tenant on April 4, 2013 via

registered mail using the tenant's forwarding address but the registered mail was returned as unclaimed.

The tenant signed the move-out inspection report acknowledging the following actions were required: remove sofa, replace and fix light fixtures, fix a closet and repair one wall in the bedroom, clean the carpets, and other general cleaning. The landlord proceeded to have this work done and filed this Application seeking compensation on April 11, 2013.

The landlord submitted that advertising efforts were made shortly after receiving the tenant's email and the landlord was able to re-rent the unit starting May 8, 2013. The landlord is seeking loss of rent for the month of April 2013 only. In addition, the landlord is seeking liquidated damages of \$426.50 calculated as 50% of the monthly rent.

In summary, the landlord seeks to recover the following amounts from the tenant:

| | |
|--|---------------|
| Loss of rent: April 2013 | \$ 853.00 |
| Liquidated damages | 426.50 |
| Repairs, sofa removal, replace light fixture | 147.79 |
| General cleaning | 50.00 |
| Carpet cleaning | <u>136.74</u> |
| Monetary claim | \$1,614.50 |

The landlord provided copies of the following documentation in support of the landlord's claims: the tenancy agreement; the tenant's ledger; the move-in and move-out inspection report; receipts and invoices for repairs and cleaning costs; copies of advertisements for the rental unit; and, the registered mail receipts.

Analysis

Upon consideration of everything presented to me I provide the following findings and reasons with respect to the landlord's claims against the tenant.

Where a tenant ends a fixed term early, the tenant may be held responsible for loss of the rent the landlord incurs until the end of the fixed term provided the landlord made reasonable efforts to mitigate its losses. In this case, I am satisfied the tenant ended the tenancy early with short notice to the landlord and the landlord made reasonable efforts to re-rent the unit. Therefore, I grant the landlord's request to recover loss of rent for the month of April 2013 in the amount of \$853.00.

Residential Tenancy Policy Guideline 4 provides for liquidated damages. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. In this case, I find the landlord has a liquidated damages clause, referred to as an “Early Termination” clause in the tenancy agreement. I find the amount payable under the clause to be a reasonable pre-estimate of costs to re-rent the unit and is not a penalty. Therefore, I grant the landlord’s request to recover liquidated damages of \$426.50 from the tenant.

Upon review of the condition inspection report and receipts and invoices supplied as evidence I am satisfied the landlord is entitled to recover the amounts claimed for damage and cleaning. Therefore, I grant the remainder of the landlord’s claims against the tenant.

I authorize the landlord to retain the tenant’s security deposit in partial satisfaction of the amounts awarded to the landlord. I further award the landlord recover of the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

| | |
|--|---------------|
| Loss of rent: April 2013 | \$ 853.00 |
| Liquidated damages | 426.50 |
| Repairs, sofa removal, replace light fixture | 147.79 |
| General cleaning | 50.00 |
| Carpet cleaning | <u>136.74</u> |
| Sub-total | \$1,614.03 |
| Less: security deposit | (400.00) |
| Plus: filing fee | <u>50.00</u> |
| Monetary Order for landlord | \$1,264.03 |

The landlord must serve the Monetary Order to the tenant and may file it in Provincial Court to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary order for the balance of \$1,264.03 to serve and enforce as necessary.

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 04, 2013

Residential Tenancy Branch

