



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed they received the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and amounts for damages to the property, that any damage is beyond reasonable wear and tear and the cost to cure the damage? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced June 30, 2012 for a fixed term ending on June 30, 2013, a security deposit of \$382.50 was paid and rent is currently \$765 a month. It is undisputed that the tenant died in May 2013 and rent for June 2013 was unpaid. The landlord claims as follows:

\$765 rental loss for June 2013 plus \$25 late fee
\$100 for washing drapes
\$40 for cleaning appliances
\$250 for liquidated damages.

Invoices and a condition inspection report were provided to support the amounts claimed. The tenant did not dispute most of the amount owing but disputed the claim for liquidated damages. He pointed out that the term of the tenancy expired on June 30,

2013, he was being required to pay rent to the end of the term so he should not be charged for liquidated damages to cover costs such as advertising as the landlord would have had to expend these amounts in any case at the end of the tenancy.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus of proof is on the landlord to prove their claim. I find the weight of the evidence is that the tenant did not pay rent for June and also owes the landlord \$25 late fee, \$100 for washing the drapes and \$40 for cleaning appliances. These amounts were undisputed and supported by invoices.

However, I find the landlord not entitled to \$250 in liquidated damages. Although the landlord contended that they advertised to try to rent the suite for June 2013, I find they would have been put to this expense in any case as the term of the tenancy expired on June 30, 2013. Furthermore, they have claimed the full amount of rent owed to the end of the fixed term so have recovered any rental loss.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss June 2013 +25 late fee	790.00
Drape washing and appliance cleaning	140.00
Filing fee	50.00
Less security deposit (no interest 2012-13)	-382.50
Total Monetary Order to landlord	597.50

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: August 01, 2013

Residential Tenancy Branch

