



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EY Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; 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 tenant 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 April 17, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was 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's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, 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 unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep the security deposit?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this tenancy started on October 01, 2012 for a fixed term that was due to expire on September 30, 2013. Rent for this unit was \$1,300.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$650.00, a key deposit of \$25.00 and a storage key deposit of \$10.00 on October 07, 2012. Both parties attended a move in and a move out inspection of the unit at the start and end of the tenancy. The tenant vacated the rental unit on February 24, 2013 and the tenant provided the landlord with a forwarding address on that date.

The landlord testifies that the tenant failed to pay all the rent owed for January, 2013 leaving an unpaid balance of \$265.00. The tenant also failed to pay rent for February, 2013 of \$1,300.00. The landlord testifies that the tenant was not served with a 10 Day Notice to End Tenancy as the tenant gave notice to vacate the rental unit on February 04, 2013 effective on February 28, 2013.

The landlord testifies that the tenant signed an agreement to allow the landlord to keep the security and key deposits to offset against carpet cleaning costs of \$113.00, drape cleaning costs of \$30.00, costs incurred to fill and touch up some holes in the unit of \$75.00 and the unpaid rent of \$1,565.00 accumulated from January and February, 2013.

The landlord testifies that the tenancy agreement has a clause that informs the tenant that a liquidated damages fee of \$300.00 will be applied if the tenant ends the tenancy before the end of the fixed term. The landlord testifies that as the tenant did end the tenancy the landlord seeks to recover this fee of \$300.00 as a genuine pre estimate of the costs to re-rent the unit.

The landlord testifies that the tenant did return a laundry card and a credit of \$1.75 has been applied to the tenant's account.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I refer the parties to Section 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find from the landlords undisputed evidence that the tenant failed to pay all the rent for January or February to an amount totally **\$1,565.00**. The landlord has therefore established a claim to recover this amount from the tenant.

I refer the parties to s. 38(4)(a) of the *Act* which states:

A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) *at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.*

The landlord has provided sufficient evidence to show that the tenant has agreed in writing that the landlord may retain the security deposit and key deposits to pay for carpet and drape cleaning and for repairs to fill and paint holes left by the tenant. I am not therefore required to make a decision in this matter of the security deposit as the tenant has agreed that the landlord may retain the security and key deposits in writing. The security and key deposits will therefore be deducted from the landlord's monetary claim for carpet cleaning of \$113.00, drape cleaning of \$30.00 and repair to damage of \$75.00. The remainder of the security and key deposits will be offset against the unpaid rent as agreed by the tenant in writing.

With regard to the landlords claim for liquidated damages of \$300.00.; the Residential Tenancy Policy Guidelines provides further clarification on the matter of liquidated damages and states, in part, that 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 tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I have considered this clause and find the amount of \$300.00 claimed is a genuine pre estimate of an amount that the landlords may potentially incur if the tenant breaches the tenancy agreement by ending the tenancy before the end of the fixed term. I find the tenant did end the tenancy before the end of the fixed term in violation of S. 45(2) of the *Act* and the landlord would incur a loss in having to re-rent the unit. I therefore uphold the landlord's application to recover the amount of **\$300.00** in liquidated damages from the tenant.

The landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* for the following amount:

Unpaid rent	\$1,565.00
Damages and cleaning agreed to by the tenant in writing	\$218.00
Liquidated damages	\$300.00
Less credit for laundry key	(-\$1.75)
Subtotal	\$2,081.25
Less security and key deposits	(-\$685.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,446.25

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 **\$1,446.25**. The order must be served on the respondent 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: July 11, 2013

Residential Tenancy Branch

