



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNR, MNDC, 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 - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. 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 January 1, 2013 on a fixed term ending December 31, 2013. Rent of \$920.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$460.00 as a security deposit. The Landlord also holds \$25.00 for a key deposit and a laundry credit of \$13.65. The tenancy agreement

provides for a \$25.00 fee for NSF cheques and the Tenant signed a parking lot agreement to pay \$20.00 monthly for parking.

The tenancy was ended by the Landlord for unpaid rent. The Landlord's notice to end the tenancy provided for an effective date of June 10, 2013. The Tenant moved out of the unit on June 18, 2013. The Parties mutually conducted both a move in and move out inspection and the Tenant did not sign the move-out inspection. The Tenant provided the forwarding address orally to the Landlord at the move-out inspection and the Landlord recorded it.

The Landlord states that the Tenant failed to pay rental arrears, parking and NSF fees and claims as follows:

- \$470.00 for April 2013 arrears;
- \$25.00 for April 2013 NSF fee;
- \$940.00 for May 2013 rent;
- \$20.00 for May 2013 parking;
- \$25.00 for May 2013 NSF fee;
- \$940.00 for June 2013 rent;
- \$20.00 for June 2013 parking; and
- \$920.00 for July 2013 rent.

The tenancy agreement provides for liquidated damages of \$300.00 and the relevant wording is as follows:

"If the tenant ends the fixed term tenancy or is in breach of the Act or a material terms of this agreement that causes the landlord to end the tenancy before the end of the term . . . the tenant will pay to the landlord the sum of \$300.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's cost of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenancy such as unpaid rent or for damage to the rental unit . . ."

The Landlord claims liquidated damages of \$300.00.

The Landlord states that the Tenant failed to clean leave the unit reasonably clean and claims as follows:

- \$150.00 for carpet cleaning of all the carpets and the bedroom carpet was stained and smelled of pet urine; and
- \$109.15 for drape cleaning. The Landlord states that the drapes were not stained but were required to be cleaned despite the short term of the tenancy.

Analysis

A tenancy ends upon the effective date of a valid notice from either party and no rent is payable after the tenancy has ended unless the tenant continues to occupy the unit.

As the Tenant was given a notice to end tenancy from the Landlord to move out of the unit for June 10, 2013 but the Tenant remained in the unit until June 18, 2013, and based on the Landlord's evidence of rental arrears and unpaid rent, I find that the Landlord has substantiated rental arrears of **\$470.00** for April 2013, unpaid rent of **\$940.00** for May 2013 and **\$552.00** for rent for June 1 to 18, 2013. Given the tenancy agreement that provides for NSF fees and based on the Landlord's undisputed evidence that two cheques were returned NSF, I find that the Landlord has substantiated an entitlement to **\$50.00**. Given the parking agreement and the Landlord's undisputed evidence that the Tenant failed to pay for parking I find that the Landlord has substantiated an entitlement to **\$40.00**.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable for that breach. In this instance although the liquidated damages clause uses the costs of re-renting to describe the amount being quantified, it does not make a difference to the outcome as the amount becomes payable upon acts that result in the early end of the tenancy: either the Tenant ends the tenancy early or by another breach causes the Landlord to end the tenancy early. This amount limits or

determines in advance the damages flowing from these acts. The clause further provides that such monies are due to the landlord in addition to other amounts such as unpaid rent or for damage to the property. I note that these additional amounts flow from different breaches of the tenancy agreement such not paying rent while occupying the unit or not leaving the unit clean and undamaged at the end of a tenancy. These amounts are not damages that would flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damage amount.

As lost rental income is a damage that flows from an early end of tenancy, as the damages arising from an early end of tenancy have been determined by agreement in advance at \$300.00, and as the Landlord has made a conflicting claim for both liquidated damages and lost rental income, I resolve the conflict in favour of the Tenant and find that the Landlord has substantiated **\$300.00** for liquidated damages. I dismiss the Landlord's claim for lost rental income.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. 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.

Generally, carpets or cloth blinds are expected to be maintained as clean on a yearly basis and after a year's tenancy, a carpet or cloth blinds would be reasonably expected to be cleaned by the tenant at the end of the tenancy. Such cleaning would not normally be required to be cleaned for a short duration tenancy unless the carpets or blinds are dirty or stained. Although the tenancy was only 6 months in duration, given the Landlord's evidence that the Tenant left the carpet stained and with urine odors, I

find that the Landlord has substantiated an entitlement to the costs of **\$150.00** for cleaning the carpet. As the Landlord provided no evidence that the curtains were dirty at the end of the tenancy, I dismiss the Landlord's claim for costs to clean the blinds.

As the Landlord's claim has met with substantial success, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,552.00**.

Deducting the security deposit of **\$460.00** plus zero interest leaves **\$2,092.00** owed by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$460 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,092.00**. 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: September 30, 2013

Residential Tenancy Branch

