



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, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; for an Order permitting the landlords 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 June 06, 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 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 money owed or compensation for damage or loss?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on July 01, 2012 for a fixed term that was due to expire on June 30, 2013. The landlord testifies that there was an error made on the tenancy agreement concerning this term which indicated that the term would expire on June 30/30. Rent for this unit was \$775.00 per month of which \$10.00 was for parking. Rent was due on the 1st day of each month. The tenant paid a security deposit of \$387.50 on June 29, 2012

The landlord testifies that the tenant gave notice to end the tenancy on April 23, 2013 with an effective date of May 31, 2013. The tenant moved from the unit on May 24, 2013. The landlord testifies that they attempted to re-rent the unit for June 01, 2013 but were unable to do so until June 26, 2013. The incoming tenants paid \$200.00 for rent for the remainder of June. The landlord seeks to recover \$575.00 in unpaid rent from the tenant. The landlord has provided copies of the advertisements placed for the unit in evidence.

The landlord testifies that as the tenant ended the tenancy before the end of the fixed term the landlord seeks to recover liquidated damages for the cost of re-renting the unit. The landlord testifies that there is a clause in the tenancy agreement relating to a charge being made in this event. The landlord seeks to recover \$457.03 for the costs to advertise this unit. The landlord has provided invoices for advertisements showing these charges.

The landlord testifies that as the tenant failed to pay rent for June, 2013 as the last month of the fixed term the landlord seeks to recover a late fee of \$25.00 as provided for under the tenancy agreement.

The landlord testifies that the tenant failed to clean the carpets at the end of the tenancy and the carpets was left unclean with some staining. The landlord has provided photographic evidence showing a stain on the carpet and a copy of the Move in and Move out condition inspection reports which describes the carpets as needing cleaning. The landlord has also provided a copy of the receipt for the carpet cleaning and seeks to recover the amount of \$68.25 from the tenant.

The landlord testifies that at the start of the tenancy the tenant was issued with six keys as documented on the condition inspection report. At the end of the tenancy the tenant only returned four keys and the landlord seeks to recover the sum of \$6.00 to replace two keys.

The landlord requests an Order to keep the security deposit to offset against the landlords monetary claim. The landlord seeks a Monetary Order for the balance including the filing fee of \$50.00.

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.

With regards to the landlords claim for unpaid rent; I refer the parties to s. 45 of the *Act* which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the date specified on the tenancy agreement was June 30, 30 (amended to 2013) the earliest date the tenant could have ended the tenancy would have been June 30, 2013. As the tenant ended the tenancy on May 31, 2013 I find the tenant is responsible for rent up to June 26, 2013(the date the unit was re-rented) as the landlord is entitled to be compensated for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Consequently I uphold the landlords claim to recover **\$575.00** from the tenant.

With regard to the landlords claim for liquidated damages; when a clause of this nature is included on a tenancy agreement and it is worded that 'the tenant will pay to the landlord the sum of \$ as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlords costs of re-renting the rental unit and must be paid in addition to other amounts owed by the tenant such as unpaid rent or for damage to the rental unit'.

However, the landlord is required to include an amount they will claim if the tenant breaches the *Act* or tenancy agreement that causes the tenancy to end before the end of the fixed term. As this clause states this must be a pre-estimate of the costs then the landlord must indicate on the tenancy agreement what those pre-estimated costs are as the tenant is signing the agreement to agree to the terms including this pre-estimated

cost. As the landlord has not included a pre-estimated figure under this clause then the tenant has not agreed to a specific amount and therefore this section of the landlords claim must be denied.

With regard to the landlords claim for late fees of \$25.00; the landlord argues that the tenant should have paid rent for June as per the tenancy agreement and as the tenant failed to do so and ended the tenancy on May 31, 2013 then the landlord is entitled to a late fee as specified under clause 10 of the tenancy agreement. I have considered the landlords claim but consider the landlords claim for unpaid rent to be a loss of rental income for June not unpaid rent as the tenant had moved from the unit on May 24, 2013. Therefore I do not consider this a late payment of rent but rather the rent for June is a loss of rental income. Consequently, I must deny the landlords claim for \$25.00.

With regard to the landlords claim for carpet cleaning; the inspection reports clearly indicate that the carpets were left unclean and the landlord's photographic evidence shows some staining. A tenant is responsible for leaving a rental unit in a reasonable clean condition at the end of the tenancy and as the landlords evidence shows that the carpets were not left reasonably clean then I uphold the landlords claim for carpet cleaning of **\$68.25**.

With regard to the landlords claim to recover the cost for cutting two keys; A tenant must return all keys provided at the end of the tenancy. As the inspection report shows six keys were provided at the start of the tenancy and only four keys were returned then I must uphold the landlords claim for the cost of cutting two keys to the amount of **\$6.00**.

I order the landlord to keep the security deposit of **\$387.50** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award. I further find as the landlord has been partially successful with their claim that they are entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 and 72(1) of the *Act*.

| | |
|---|-----------------|
| Loss of rental income from June 01 to June 26, 2013 | \$575.00 |
| Carpet cleaning | \$68.25 |
| Replacement keys | \$6.00 |
| Subtotal | \$649.25 |
| Less security deposit | (-\$387.50) |
| Plus filing fee | \$50.00 |
| Total amount due to the landlord | \$311.75 |

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$311.75**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim is dismissed without leave to reapply.

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 11, 2013

Residential Tenancy Branch

