



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing them to retain the security deposit. Despite having been served with the application for dispute resolution and notice of hearing via registered mail sent on July 22, 2013, the tenant did not participate in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The landlord's undisputed testimony is as follows. The tenancy began on March 1, 2013 and ended on July 14, 2013, although it was set for a fixed term to expire in 2014. Rent was set at \$1,295.00 per month and at the outset of the tenancy, the tenant paid a \$647.50 security deposit. The tenant failed to pay rent in the month of July and vacated the unit pursuant to a 10 day notice to end tenancy for unpaid rent. The landlord's claims and my findings around each are set out below:

July rent and late payment fee

The landlord seeks to recover \$1,295.00 in unpaid rent for the month of July and a \$20.00 late payment fee pursuant to the terms of the tenancy agreement. I find that the tenant failed to pay rent in July and should be subject to a late payment fee and I find that the landlord is entitled to recover these monies. I award the landlord \$1,325.00 which represents the unpaid rent and the late payment fee.

August loss of income

The landlord seeks to recover \$584.84 in lost income for the month of August, prorated to August 15, the date the rental unit was re-rented. The landlord presented evidence showing that they took steps to advertise the unit immediately after they served the notice to end tenancy but were unable to find a new tenant until August 15.

In order to succeed in this claim, the landlord must prove that the loss resulted from the tenant's failure to comply with the Act or tenancy agreement. After having reviewed the evidence, it is clear that the tenant left the unit in a condition which required cleaning and painting as described below. The tenant breached the terms of the tenancy agreement by failing to pay rent and had he not done so, the landlord would not have needed to advertise the rental unit in the middle of the fixed term. I find that the loss is directly attributable to the tenant and I award the landlord \$584.84.

Carpet cleaning

The landlord seeks to recover \$80.00 paid to clean the carpet in the rental unit at the end of the tenancy. The landlord provided an invoice showing the amount paid as well as photographs showing that the carpet was heavily soiled. I am satisfied that the carpet required cleaning and that the tenant failed to leave the carpet in reasonably clean condition as he is required to do under the Act. I find that the landlord is entitled to recover the cost of carpet cleaning and I award them \$80.00.

Suite cleaning

The landlord seeks to recover \$55.00 for the cost of cleaning drapes and blinds and \$165.00 as the cost of cleaning the rental unit. The landlord provided photographs showing that the rental unit was extremely dirty at the end of the tenancy and that blood was spattered on the walls. I am satisfied that the unit and window coverings required cleaning and that the tenant failed to leave the unit in reasonably clean condition as he is required to do under the Act. I find that the landlord is entitled to recover the cost of cleaning the suite and I award them \$220.00.

Wall repair and painting

The landlord seeks to recover \$60.00 as the cost of repairing and repainting areas of the walls. The landlord's agent who performed the repairs testified that on one wall there were more than 30 holes and that some walls were spattered with blood. The landlord provided photographs of the unit showing the condition of the walls. I am satisfied that the walls required repair and some touch up painting and that the tenant

failed to leave the walls in reasonably clean condition with only reasonable wear and tear as is required under the Act. I find the cost of the repairs to be reasonable and If find that the landlord is entitled to recoup these monies. I award the landlord \$60.00.

Garbage removal

The landlord seeks to recover \$60.00 as the cost of removing garbage from the rental unit. The agent who performed the removal testified that the tenant left behind a significant number of items as well as garbage when he vacated the unit. I accept the undisputed testimony of the agent and I find that the landlord is entitled to recover the cost of garbage removal. I award the landlord \$60.00.

Liquidated damages

The landlord seeks an award of \$300.00 as liquidated damages pursuant to the following term of the tenancy agreement:

To terminate this lease prior to the expiry date on the 28 day of February, 2014, the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition the tenant will be required to pay \$300.00 as liquidated damages to cover administration costs. This is not a penalty.

In order for the landlord to be successful in this claim, they must prove that they have a contractual entitlement to liquidated damages. A straightforward reading of the liquidated damages provision shows that the sum is only payable if the tenant gives notice to end his tenancy prior to the end of the fixed term. The landlord had the option of crafting a clause which would permit them to charge liquidated damages if the tenant caused the landlord to end the tenancy, but this provision does achieve that end.

I find that the landlord has failed to prove that they have a contractual entitlement to liquidated damages and I dismiss that claim.

Filing fee

As the landlord has been successful in their claim, I find that they should recover the \$50.00 filing fee and I award them that sum.

Conclusion

In summary, the landlord has been successful as follows:

July rent and late payment fee	\$1,325.00
August loss of income	\$ 584.84
Carpet cleaning	\$ 80.00
Suite cleaning	\$ 220.00
Wall repair and painting	\$ 60.00
Garbage removal	\$ 60.00
Filing fee	\$ 50.00
Total:	\$2,379.84

The landlord has been awarded a total of \$2,379.84. I order the landlord to retain the \$647.50 security deposit in partial satisfaction of the claim and I grant them an order under section 67 for the balance of \$1,732.34. This order may be filed in the Small Claims Division of the Provincial 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: October 30, 2013

Residential Tenancy Branch

