



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, liquidated damages, return of the move in bonus, cost of cleaning the carpet and for the filing fee. The landlord also applied to retain the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages, return of the move in bonus, cost of cleaning the carpet and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on August 01, 2013 for a fixed term ending January 31, 2014. The rent was \$680.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$340.00. The landlord filed a copy of the tenancy agreement that contains a clause regarding liquidated damages as follows:

“Tenants *breaking this Lease Agreement remain responsible for the payment of rent and utilities for the duration of the lease. Additionally the Tenant will be assessed the sum of Two Hundred (\$200.00) dollars as liquidated damages and not as a penalty, to cover the Landlord’s administration costs of re-renting the said premises*”

On October 17, 2013, the tenant gave the landlord written notice to end the tenancy effective October 31, 2013. The landlord testified that he started looking for a new tenant after the carpet was cleaned on November 05, 2013. A new tenant was found for December 01, 2013.

The landlord testified that by signing the addendum to the lease agreement, the tenant agreed to steam clean the carpet upon move out or pay a charge of \$75.00 to the landlord for the cost of steam cleaning the carpet. The tenant testified that he cleaned the carpet prior to moving out. The landlord argued that the carpet required cleaning. The landlord filed a copy of the move out report which also states that the carpet needed cleaning. The tenant did not agree with the report and had refused to sign it.

The tenant acknowledged that he was provided with a move in bonus of \$200.00 and also acknowledged that he was aware that he would have to return it in the event he ended the tenancy prior to the end date of the fixed term.

The tenant stated that he moved out because he did not feel safe in the neighbourhood due to criminal activity. The tenant testified that he was given to understand that the area was safe and quiet and that is why he entered into a fixed term tenancy.

The landlord is claiming the following:

1.	Loss of income for November 2013	\$680.00
2.	Liquidated damages	\$200.00
3.	Carpet cleaning	\$75.00
4.	Move in bonus	\$200.00
5.	Filing fee	\$50.00
	Total	\$1,205.00

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of the both parties, I find that, on October 17, 2013, the tenant gave notice to end the tenancy effective October 31, 2013 which is prior to the end date of the fixed term and after the day rent is due.

By not giving the landlord adequate notice to end the tenancy, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. However, the landlord testified that he started making efforts to find a tenant after November 05, 2013. The landlord was notified on or about October 17, 2013 of the availability of the unit but chose to wait until the tenant had moved out and the carpet was cleaned before he started showing the rental unit to prospective tenants. By commencing efforts after November 05, it was unlikely that a tenant would be found for the month of November. Therefore I find that the landlord did not do whatever is reasonable to minimize the loss of income that he suffered and accordingly his claim for loss of income is dismissed.

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, 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.

In this case, the tenant signed in agreement to paying liquidated damages of \$200.00 in the event that he ended the lease prior to the end of the fixed term. Therefore I award the landlord \$200.00 for liquidated damages.

The tenant also signed in agreement that he would return the move in bonus of \$200.00 if he ended the lease prior to the end of the fixed term. Therefore I award the landlord this amount.

Regarding the cost of carpet cleaning, the testimony of both parties was contradictory. The tenant stated he cleaned the carpet and the landlord stated that the carpet needed cleaning. *Residential Tenancy Policy Guideline#1* states that the tenant is responsible for periodic cleaning of the carpet to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

In this case the tenancy lasted for three months. Based on the testimony of the tenant, I find that on a balance of probabilities, it is more likely than not that the tenant cleaned the carpet but did not clean it to the standards of the landlord.

Since the tenancy was not one year in length and based on policy guideline #1, I find that the tenant is not responsible for the cost of steam cleaning the carpet.

Since the landlord has proven a portion of his case, I find that he is also entitled to the recovery of her filing fee, in the amount of \$50.00.

Overall the landlord has established a claim as follows:

1.	Loss of income for November 2013	\$0.00
2.	Liquidated damages	\$200.00
3.	Carpet cleaning	\$0.00
4.	Move in bonus	\$200.00
5.	Filing fee	\$50.00
	Total	\$450.00

I order that the landlord retain the security deposit of **\$340.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$110.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$110.00**.

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: February 19, 2014

Residential Tenancy Branch

