



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOWNTOWN SUITES 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 and the filing fee. The landlord also applied to retain the security deposit.

The landlord served the notice of hearing on the tenant by registered mail, on November 02, 2013, to the forwarding address provided by the tenant. The landlord filed a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was 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, and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on July 01, 2012 for a fixed term of one year. The rent was \$2,400.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$1,200.00. The landlord filed a copy of the tenancy agreement that contains a clause regarding liquidated damages that states:

“ If the tenant terminates this agreement during the fixed term, the tenant will reimburse the owner for all costs associated with re-renting the suite including but not limited to advertising, tenant credit checks(\$20.00 each) and re-leasing fees the owner must pay to DTS to re-let the property (half of 1 month’s rent). In the event that the tenant terminates this agreement during the fixed term and the landlord cannot re-rent the suite for the following month despite reasonable efforts to do so, the tenant is responsible for the monthly rent for the duration of the fixed term until a suitable tenant is found.

The tenant is also responsible for the difference in rent for the duration of the fixed term if the suite is re-rented at a lesser rate.”

On October 02, 2013, the tenant gave the landlord written notice to end the tenancy effective October 31, 2014. The landlord testified that she advertised the availability of the rental unit immediately at the same rent and had some showings, but was unable to find a tenant for November. A tenant was found for December at a reduced rate of rent.

The landlord is claiming the following:

1.	Loss of income for November 2013	\$2,400.00
2.	Re-leasing fee	\$1,100.00
3.	Credit checks	\$53.58
4.	Rent differential	\$1,400.00
5.	Filing fee	\$50.00
	Total	\$5,003.58

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 undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. In this case, on October 02, 2013, the tenant gave notice to end the tenancy effective October 31, 2013. The landlord made attempts to re-rent the unit but was unsuccessful at finding a tenant for November 2013. I find that the tenant did not provide adequate notice to end the tenancy and accordingly the landlord is entitled to the loss of income suffered in November 2013 in the amount of **\$2,400.00**.

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 contract law the term “*liquidated damages*” refers to a genuine pre-estimate of the loss that will be suffered in the event of a breach of the contract; it is not used to describe some subset of damage that the landlord requires the tenant to pay, in addition to general damages flowing from a breach of the contract.

In this case, the landlord invoked the liquidated damage clause in the tenancy agreement and elected to claim the liquidated damage amount. I find that by doing so the landlord has fixed the amount of damages to which the landlord is entitled to at **\$1,100.00**. The landlord's claims for additional amounts over and above the liquidated damage amount are dismissed without leave to reapply

Since the landlord has proven a portion of her case, I find that she 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	\$2,400.00
2.	Re-leasing fee	\$1,100.00
3.	Credit checks	\$0.00
4.	Rent differential	\$0.00
5.	Filing fee	\$50.00
	Total	\$3,550.00

I order that the landlord retain the security deposit of **\$1,200.00** 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 **\$2,350.00**. 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 **\$2,350.00**.

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 14, 2014

Residential Tenancy Branch

