



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGARA GARDENS HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MND, 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, cost of painting 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, cost of painting and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on May 01, 2013 for a fixed term ending April 30, 2014. The rent was \$1,325.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$662.00 and a key deposit of \$100.00.

The landlord filed a copy of the tenancy agreement that contains a clause regarding liquidated damages as follows:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any other subsequent fixed term, the tenant will pay to the landlord the sum of \$662.00 as liquidated damages, and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

On January 31, 2014, the tenant gave the landlord written notice to end the tenancy effective March 01, 2014 and moved out by that date.

The landlord is claiming the following:

1.	Loss of income for March 2014	\$1,325.00
2.	Liquidated damages	\$662.00
3.	Rent for December 2014	\$40.00
4.	Painting	\$100.00
5.	Decal replacement	\$50.00
6.	Filing fee	\$50.00
	Total	\$2,227.00

Analysis

Based on the testimony of both parties, I find that the tenant was in a fixed term tenancy with an end date of April 30, 2014. By ending the tenancy prior to the end date, the tenant breached a term of the tenancy agreement.

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 **\$662.00**. The landlord’s claims for additional amounts flowing from the tenant’s breach of contract, over and above the liquidated damage amount are dismissed without leave to reapply.

Accordingly, I award the landlord his claim for liquidated damages and dismiss his claim for loss of income.

The tenant did not dispute the landlord's claim for unpaid rent for December and for cost of replacing the decal.

The landlord filed photographs to support his claim of \$100.00 for painting. The tenant agreed that the rental unit was painted just prior to the start of the tenancy and that the tenant had made holes in the wall to mount his television. Therefore I find that the tenant is liable for the cost of painting.

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 March 2014	\$0.00
2.	Liquidated damages	\$662.00
3.	Rent for December 2014	\$40.00
4.	Painting	\$100.00
5.	Decal replacement	\$50.00
6.	Filing fee	\$50.00
	Total	\$902.00

I order that the landlord retain the security deposit and key deposit of **\$762.00** 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 **\$140.00**. 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 **\$140.00**.

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: June 26, 2014

Residential Tenancy Branch

