



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fraser Marine Drive Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, 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 sent via registered mail on September 3, 2014, the tenants did not participate in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on July 1, 2014 and was set to run for a fixed term ending on July 31, 2015. The tenants vacated the rental unit on August 20. At the outset of the tenancy, the tenants paid a \$400.00 security deposit.

The landlord seeks to recover unpaid rent for the month of August as the tenants did not pay rent in that month.

The landlord seeks an award of \$400.00 which represents liquidated damages. The tenancy agreement provides in part as follows:

If the Tenant breaches a material term of this Agreement that causes the Landlord to end the tenancy before the end of any fixed term as set out in clause 5 above, or if the Tenant provides the Landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the Tenant will pay to the Landlord the sum of \$400.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the Landlord's costs of re-letting 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.

The landlord seeks \$150.00 as the cost of cleaning the rental unit at the end of the tenancy and provided an invoice showing that this amount was paid for cleaning. The landlord also provided photographs showing the condition of the rental unit at the end of the tenancy. The photographs show that the kitchen, kitchen appliances and bathroom were not cleaned at the end of the tenancy. The landlord's agent testified that the entire unit had to be cleaned.

The landlord seeks an award of \$80.00 as the cost of cleaning the bedroom carpet at the end of the tenancy and provided an invoice showing that this amount was paid for carpet cleaning. The landlord also provided a photograph of the carpet showing that it was heavily soiled.

The landlord seeks to recover the \$50.00 filing fee paid to bring this application.

Analysis

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

I accept the landlord's undisputed testimony and I find that the tenants were obligated to pay rent of \$800.00 per month in advance on the first day of the month. The tenants occupied the rental unit until at least August 20 and I find that they breached their contractual obligation to pay rent in that month. I find that the landlord lost income for the month of August, they have proven the value of that loss and as the tenants remained in the rental unit for most of the month, there was nothing the landlord could have done to minimize the loss. I find that the landlord is entitled to recover the unpaid \$800.00 pursuant to the terms of the tenancy agreement and I award the landlord \$800.00.

I find that the tenants were obligated to continue to pay rent throughout the fixed term of the tenancy agreement. I find that the tenants breached the agreement by giving the landlord notice on August 20 that they were vacating the rental unit and I find that this

action triggered the liquidated damages clause. I find that pursuant to the terms of this clause, the landlord is entitled to an amount of \$400.00 and I award them that sum.

The tenants were obligated under section 37(2) of the Act to leave the rental unit reasonably clean. I find that the tenants failed to clean the rental unit and therefore failed to comply with their obligation under the Act. I find that as a result of this breach, the landlord suffered a loss of \$150.00 as this is what they paid to a professional cleaning service and I find that there was nothing they could have done to minimize their losses. I find that the landlord is entitled to recover the cost of cleaning and I award them \$150.00.

I find that the tenants also breached their obligation under section 37(2) by failing to clean the carpet at the end of the tenancy. I find that as a result of this breach, the landlord suffered a loss of \$80.00 as this is what they paid to a carpet cleaning service and I find that there was nothing they could have done to minimize their losses. I find that the landlord is entitled to recover the cost of carpet cleaning and I award them \$80.00.

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

In summary, the landlord has been awarded \$1,480.00. I order the landlord to retain the \$400.00 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance of \$1,080.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$1,080.00 and will retain the security deposit.

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: March 16, 2015

