



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MNR, FF, O

Introduction

This hearing was convened in response to an application by the landlord dated October 04, 2014 for a Monetary Order under the *Residential Tenancy Act* (the Act) to recover a loss of rent revenue and compensation for damage and loss and inclusive of recovery of the filing fee associated with this application; and, an order to retain the security deposit in partial satisfaction of the monetary claim.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail service in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord testified they also provided all of their evidence to this hearing to the tenant. The tenant submitted 25 pages of evidence: which the landlord testified they did not receive, and nor did they receive any notice respecting its delivery awaited them. Without evidence that the tenant has provided their evidence to the landlord, I determined the tenant's submission inadmissible into evidence and it was not considered. It must be noted that the landlord's evidence indicates that the tenant would not be attending today's hearing because of prior commitments. The landlord was given full opportunity to be heard, to present relevant evidence and to make relevant submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence is as follows. This tenancy is subject to a written tenancy agreement provided into evidence. The tenancy began June 27, 2014 as an 11 month fixed term tenancy which ended earlier than contracted, on September 30, 2014, when the tenant vacated. Rent in the amount of \$2000.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1000.00 which the landlord retains in trust.

The landlord seeks loss of revenue for October 2014 in the amount of the monthly rent under the agreement of \$2000.00, although they claim they were unable to re-rent the unit until mid-December 2014. They testified they did not receive a notice to vacate from the tenant in accordance with the Act and therefore were not afforded opportunity to mitigate losses for the month of October 2014. The landlord provided evidence of an *e-mail* from the tenant dated September 02, 2014 that they would vacate 2 months later November 01, [2014]; however, the landlord also provided a *text* message from the tenant dated October 01, 2014 notifying the landlord they had already vacated the rental unit. The landlord testified that as a result they were surprised and simply went to the unit and found it undamaged; however, lacking in sufficient cleanliness to attract new tenants. The landlord testified that they did not complete a condition inspection report nor document the condition of the unit. The landlord seeks \$350.00 – the amount the landlord claims they paid for cleaning of the rental unit, for which they provided a receipt dated October 04, 2014.

In addition, the landlord relies on the Addendum of the tenancy agreement and seeks compensation of \$2000.00 pursuant to the Addendum term that, *#4) in the event the tenant must break the lease, 30 days written notice is required, the tenant agrees to pay 1 full month's rent penalty.*

Analysis

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims on balance of probabilities.

It must further be noted that **Section 7** of the Act provides as follows in respect to claims of compensation of losses or damages.

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term. A landlord's claim for losses of rent is subject to their statutory duty pursuant to Section 7(2) above to do whatever is reasonable to minimize the damage or loss. In this matter I find that in the absence of a notice from the tenant to end the tenancy, in accordance with **Section 45** of the Act, the landlord was not afforded reasonable opportunity to take steps in order to minimize the loss of revenue for the month following the tenant's departure: October 2014. As a result, I grant the landlord loss of revenue for October 2014 in the amount of **\$2000.00**.

I find that as the tenant effectively abandoned the rental unit without the required Notice to End the landlord was not obligated to conduct their own inspection and record their findings. None the less, the landlord must satisfy the requirements of Section 7 of the Act in claims for compensation. Effectively, the landlord must satisfy each component of the test below:

1. *Proof the loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*

3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

Section 37 of the Act requires that when a tenant vacates a rental unit they must leave the rental unit “*reasonably clean and undamaged*”. I am not satisfied by the landlord’s evidence that the rental unit was left *sufficiently unclean* so as to warrant additional cleaning and a cost to the tenant. I find the landlord has not met the above test and as a result I must **dismiss** the landlord’s claim for cleaning.

A Tenancy Agreement is, effectively, a contract for a tenancy and it is available to the parties to contract or agree as to what will occur in the event that a fixed term agreement is ended early by the tenant. Commonly fixed term tenancy agreements may include *liquidated damages* clause intended to offset pre-estimated costs for the landlord to re-rent the unit if the tenancy is ended earlier than contracted. In this matter the landlord’s contract term simply stipulates that the tenant agrees to pay a *penalty* of \$2000.00 if the tenant breaks the lease. **Residential Tenancy Policy Guidelines (RTPG)** respecting *Liquidated Damages* state that in order for a landlord’s claim of *Liquidated Damages* to be enforceable, their claim in the Tenancy Agreement must be a *genuine pre-estimate of loss at the time the contract is entered into*. I find that by definition this means the landlord must reflect in their pre-estimate what costs they foresee they could incur following a breach of the fixed term Agreement. If on claim the clause is determined to be a penalty, it will not be enforceable. However, if the landlord’s clause is determined to be valid the tenant must pay the stipulated amount in the Agreement. In this matter, I find the landlord is clear that the amount claimed is a *penalty* and not at all a *genuine pre-estimate of loss to the landlord at the time the contract was entered*. I find the landlord’s term is unfair and unconscionable and therefore is not enforceable – with the result that I must **dismiss** this portion of the landlord’s claim.

As the landlord has been partially successful in their application they are entitled to recover their filing fee of \$50.00, for a total entitlement of **\$2050.00**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order:

Loss of rent revenue for October 2014	\$2000.00
Landlord's filing fee	\$50.00
<i>less Tenant's security deposit: in trust</i>	<i>- \$1000.00</i>
Monetary Order for landlord	\$1050.00

Conclusion

The landlord's application in part has been granted and the balance dismissed, without leave to reapply.

I Order that the landlord may retain the security deposit of \$1000.00 in partial satisfaction of their award, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$1050.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: May 12, 2015

Residential Tenancy Branch