



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes 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 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 letter on April 10, 2015, the tenant 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 testimony is as follows. The tenancy began in February 2014 at which time the tenant paid a \$412.50 security deposit and ended on March 28, 2015. The tenant was obligated to pay \$825.00 per month in rent.

The tenant failed to pay \$24.98 of the rent owing for February 2014 and paid no rent whatsoever in the month of March. The landlord seeks to recover the unpaid rent as well as \$25.00 late payment fees for each of those months pursuant to the terms of the tenancy agreement.

The landlord presented evidence showing that when the tenant failed to pay rent, the landlord served him with a 10 day notice to end tenancy and ended the fixed term at that point. The tenancy agreement contains a liquidated damages clause which provides 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 ... the tenant will pay to the landlord the sum of \$500 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The landlord seeks an award of \$500.00 as liquidated damages as the tenant's failure to pay rent caused the landlord to end the tenancy.

The landlord testified that the tenant failed to clean the carpet at the end of the tenancy and seeks to recover \$115.50 in carpet cleaning costs.

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

Analysis

I accept the landlord's undisputed testimony and I find that the tenant failed to pay \$24.98 of his rent in February and paid no rent in March. I find that the landlord is entitled to recover those rental arrears as well as late payment fees for each month for an award of \$899.98.

I find that payment of rent is a material term of the tenancy and I find that the tenant's failure to pay rent and comply with this material term caused the landlord to end the tenancy, which in turn triggered the operation of the liquidated damages clause. There is no evidence that this sum is a penalty and I find that the landlord is entitled to liquidated damages. I award the landlord \$500.00.

The tenant resided in the rental unit for more than one year and pursuant to Residential Tenancy Policy Guideline #1, was expected to clean the carpet at the end of the tenancy. I find that the tenant failed to do so and I find that the landlord is entitled to recover the cost of carpet cleaning. I award the landlord \$115.50.

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

The landlord has been awarded a total of \$1,565.48. I order the landlord to retain the \$412.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$1,152.98. 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 \$1,152.98 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: September 16, 2015

Residential Tenancy Branch

