



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MND, MNR, MNDC, MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for the loss of income suffered when the tenant moved out prior to the end date of the fixed term, cost of cleaning, liquidated damages and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The landlord testified that she served the tenant with a notice of hearing and evidence package on April 10, 2015 to the address provided by the tenant. The landlord filed a copy of the tracking slip. 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, cost of cleaning, liquidated damages and the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on June 01, 2014 for a fixed term of one year. The monthly rent was \$800.00 due on the first of the month and prior to moving in the tenant paid a security deposit of \$400.00. A copy of the rental agreement was filed into evidence.

The landlord stated that on February 28, 2015, the tenant gave notice to end the tenancy effective March 31, 2015 and moved out on that day.

Move in and move out inspection reports were filed into evidence. The tenant's representative attended the move out inspection but refused to sign in agreement of the amount that the landlord was claiming.

The landlord stated that the tenant had ended the tenancy prior to the end date of the fixed term and despite efforts to find a tenant for April 01, 2015, the landlord was not able to find a new tenant for a start date prior to June 01, 2015. The landlord testified that the vacancy was advertised on various websites and in the local newspaper but did not file copies of the advertisements into evidence.

The landlord is claiming a loss of income for the months of April and May 2015 in the amount of \$1,600.00.

The landlord stated that the rental unit needed cleaning and is claiming \$80.00 for the cost of cleaning. The landlord did not file any photographs or a receipt to support her claim. The landlord is also claiming \$300.00 for liquidated damages and \$50.00 for the filing fee.

The landlord is claiming the following:

1.	Loss of income	\$1,600.00
2.	Liquidated damages	\$300.00
3.	Carpet cleaning	\$80.00
4.	Filing fee	\$50.00
	Total	\$2,030.00

Analysis

1. Loss of income - \$1,600.00
2. Liquidated damages - \$300.00

Section 45(2) 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:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the testimony of the landlord, I find that the landlord was notified about the tenant's intention to end the tenancy on February 28, 2015. The tenant moved out on March 31, 2015.

Based on the tenancy agreement filed into evidence, I find that the tenant was in a fixed term tenancy with an end date of December 31, 2015. 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.

A term in the addendum to the tenancy agreement addresses "*Breaking Lease Term*" and states the following:

If the tenant terminates the tenancy before the end of the original term, the landlord may, at the landlord's option treat this tenancy agreement as being at an end. In such event, the sum of \$300.00 shall be paid by the tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said premises. The landlord and tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the landlord from exercising any further right of pursuing another remedy available in law or in equity, including but not limited to, damages to the premises and damages as a result of loss of rental income due to the tenant's breach of the terms of this 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 \$300.00.

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 her claim for liquidated damages in the amount of \$300.00 and dismiss her claim for loss of income.

3. Carpet cleaning - \$80.00

The landlord testified that at the move out inspection, the tenant's representative did not agree to cover the cost of cleaning. Other than the move out inspection report, the landlord did not file any photographs or an invoice to support her claim, and therefore I dismiss the landlord's claim for the cost of cleaning.

4. Filing fee - \$50.00

The landlord has proven a portion of her claim and accordingly I award the landlord \$50.00 towards the filing fee.

The landlord has established a claim of \$300.00 for liquidated damages plus \$50.00 for the filing fee for a total of \$350.00. I order that the landlord retain this amount from the security deposit of \$400.00 in full satisfaction of the claim and return the balance of \$50.00 to the tenant within 15 days of receipt of this decision.

Conclusion

The landlord must return \$50.00 to the tenant within 15 days of receipt of this decision.

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 15, 2015

Residential Tenancy Branch

