



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package on June 1, 2015 by Canada Post Registered Mail. The landlord has provided the Customer Receipt Tracking number as confirmation. During the hearing the landlord stated that an online search of the Canada Post Website states that the tenant signed for and received the package on June 2, 2015.

The landlord also stated that the tenant was served with the landlord's documentary evidence by Canada Post Registered Mail on September 23, 2015. The landlord has provided the Customer Receipt Tracking number as confirmation. The landlord stated that an online search of the Canada Post Website states that the tenant signed for and received the package on September 25, 2015.

Based upon the undisputed affirmed testimony of the landlord, I find that the tenant has been deemed served with the notice of hearing package and the submitted

documentary evidence by Canada Post Registered Mail on the fifth day after their registered mailing, as set out in section 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for loss under the Act, regulation or tenancy agreement and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

This tenancy began on September 1, 2014 on a fixed term tenancy ending on August 31, 2015. The tenancy ended on April 29, 2015. The monthly rent was \$1,000.00 payable on the 1st day of each month and a security deposit of \$500.00 was paid on August 8, 2014.

The landlord seeks a monetary claim of \$1,734.00 which consists of:

\$1,000.00	Loss of June 2015 Rent
\$100.00	Cleaning
\$84.00	Carpets
\$500.00	Liquidated Damages
\$50.00	Filing Fee
\$1,734.00	Total Claim

The landlord provided direct testimony that the tenant vacated the rental unit on May 12, 2015 without notice. The landlord stated that the tenant had previously given written notice to vacate the rental unit on April 30, 2015 for April 30, 2015, but due to the tenant's circumstances did not vacate the rental unit. The landlord stated after immediately advertising the rental premises on May 12, 2015, the landlord was only able to secure a new tenant for July 1, 2015.

The landlord seeks compensation for cleaning of \$100.00 based upon the invoice from the M.T. cleaning service. The landlord seeks recovery of \$84.00 for professional carpet cleaning service as required under clause #19 of the signed tenancy agreement. The landlord also seeks liquidated damages of \$500.0 as the tenant breached the fixed term tenancy ending on August 31, 2015 by vacating the rental prematurely on May 12, 2015 as per clause #26 of the signed tenancy agreement.

Analysis

I accept the undisputed and affirmed testimony of the landlord and find that a monetary claim has been established under the following terms.

\$1,000.00	Loss of June 2015 Rent
\$100.00	Cleaning
\$50.00	Filing Fee

It is clear based upon the undisputed evidence of the landlord that the tenant prematurely ended the tenancy on May 12, 2015. I find that the landlord has reasonably mitigated any possible losses by immediately advertising the rental unit and was able to re-rent the unit on July 1, 2015. The landlord's claim for loss of rental income for June 2015 is granted.

The landlord has provided undisputed affirmed testimony that the tenant left the rental unit dirty requiring cleaning costs of \$100.00. The landlord submitted a copy of an invoice which the landlord stated was paid to M.T. for \$120.00. The landlord clarified that they were only seeking \$100.00 as specified on the incomplete condition inspection report for the move-out. The landlord's claim for recovery of cleaning costs of \$100.00 is granted.

The landlord seeks \$84.00 for professional carpet cleaning cost to have the carpet in the rental premises professionally cleaned as a result of the tenant's neglect in following clause #19 of the signed tenancy agreement which states,

The TENANT agrees to clean all carpets annually, and to have the carpets professionally cleaned on termination of tenancy.

To be successful in such a claim, the landlord must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the tenant. The landlord has not provided me with any receipts or evidence of the alleged damage/loss. On this basis, I find that the landlord has failed to meet her burden in respect of her claim for damages/loss. I therefore dismiss this portion of the landlord's claim without leave to reapply.

The landlord also seeks to recover \$500.00 for liquidated damages as per clause #26 in the signed tenancy agreement. It states,

The TENANT, agrees to pay a **Lease Breaking Fee of \$500.00 and the Advertising Costs** to procure a new Tenant, in the event that a notice is given to terminate this Agreement prior to its expiry date. This paragraph does not remove the Tenant's liability to pay rent in the event that the LANDLORD is unable to procure a new TENANT. Initials: _____
Landlord Tenant

I note for the record that neither the landlord nor the tenant initialled this clause. Residential Tenancy Policy Guideline #4 speaks to Liquidated Damages and states in part that 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. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

The liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after a tenant breach. The cost of re-renting a rental unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why landlords enter into fixed-term tenancy agreements is to attempt to limit the number of times the landlord must incur the costs of re-renting.

In this case the landlord's liquidated damages clause states, "The TENANT, agrees to pay a **Lease Breaking Fee of \$500.00 and the Advertising Costs** to procure a new Tenant". I find that the wording in this clause constitutes a penalty as it clearly states that the tenant must pay the lease break fee of \$500.00 and any additional advertising costs. The landlord did not provide any details of advertising costs other than to state that advertising was done. I also note that the landlord having drafted this clause, failed to have both the landlord and the tenant initial to show their agreement on this clause. I find that in doing so, the landlord failed to exercise this clause and the tenant did not consent to it. As such, I find that the landlord's monetary claim for liquidated damages is dismissed without leave to reapply as this constitutes a penalty and is unenforceable.

The landlord applied to keep the tenant's \$500.00 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$650.00 under the following terms:

\$1,000.00	Loss of June 2015 Rent
\$100.00	Cleaning
\$50.00	Filing Fee
\$1,150.00	Total of Above Items
-\$500.00	Offset Security Deposit
\$650.00	Total Monetary Order

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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: October 05, 2015

Residential Tenancy Branch

