



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for liquidated damages and an administrative fees; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to liquidated damages and an administrative fee as claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The fixed term tenancy commenced April 1, 2015 and was set to expire on October 31, 2015. The tenant paid a security deposit of \$387.50. The tenant vacated the rental unit in April 2015.

The landlord seeks to recover liquidated damages in the amount of \$775.00 since the tenant ended the tenancy before the expiry of the fixed term. The fifth term of the tenancy agreement provides for a liquidated damages clause. It provides, in part: "...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 \$775.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit."

The landlord also seeks compensation of \$25.00 plus GST of \$1.25. The landlord submitted that it is the landlord's "standard practice" to charge an administrative fee if

there are amounts owing by the tenant at the end of the tenancy. I did not seek the tenant's response to this claim as I dismissed it summarily during the hearing. My reasons for dismissing this claim are provided in the analysis of this decision.

The tenant indicated that she understood and did not deny that the liquidated damages are payable because she ended the tenancy early. However, the tenant took a position that the liquidated damages should be offset by doubling of her security deposit even though she had not filed an Application for Dispute Resolution.

I noted that the landlord's evidence included a security deposit statement on the condition inspection report and the tenant's signature appears in the space that provides for the tenant's authorization for the landlord to make deductions from the security deposit. On the security deposit statement the amount of the security deposit appears as well as a charge for liquidated damages of \$775.00. The tenant responded by stating that her signature appears to be a forgery. The tenant also claimed that she signed "a document" at the end of the tenancy but she stated it was blank and the building manager(s) had indicated to her that it would be filled in at a later time. In the event the amounts were added after the tenant signed the security deposit statement, or if the tenant had not signed the security deposit statement, the landlord did seek authorization to retain the security deposit by filing this Application.

The tenant further submitted that she had given the former building manager(s) a notice to end tenancy in writing and the notice included her forwarding address in writing. The landlords appearing at the hearing stated that such notice to end tenancy was not in the tenant's file. Nor, was a written forwarding address in the tenant's file. Further, the landlords stated that they confirmed with the former building manager(s) that the tenant did not give a forwarding address to the former building manager(s). The tenant insinuated that the landlord conveniently failed to include her notice to end tenancy in the landlord's evidence and she was disadvantaged since the former building managers were not present for the hearing. The tenant acknowledged that she did not keep a copy of the notice she gave to the landlords. I asked the landlords appearing at the hearing as to whether the former building manager(s) were available to testify. The landlord was able to reach one of the former building managers during the hearing and the former building manager was asked to call in to the teleconference call but I heard that he was the only person in his office and he was dealing with clients at the time but that he would try to call in shortly. The hearing paused for a number of minutes; however, during that time the former building manager did not call into the hearing.

Considering the tenant had not filed an Application for Dispute Resolution or serve a response to the landlord's application to indicate she would be seeking return of double

the security deposit by way of this hearing, I found that to continue to consider the tenant's position for doubling of the security deposit would be prejudicial to the landlord and a violation of procedural fairness and the principles of natural justice. Accordingly, I informed the parties that I would not consider doubling of the security deposit further and the tenant is at liberty to file an Application for Dispute Resolution if she intends to pursue such an entitlement. The tenant was also informed that there are filing deadlines under the Act.

Analysis

Upon consideration of the evidence before me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

The landlord seeks liquidated damages from the tenant because the tenant ended the fixed term tenancy agreement before the expiry of the fixed term. It was undisputed that the tenant ended the tenancy agreement early and that the tenancy agreement provides for a liquidated damages clause. 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 fixed term by the tenant. As provided in Residential Tenancy Policy Guideline 4, if a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the liquidated damages clause to be within reason and the tenant did not raise any disagreement or objection to the amount payable under the term. Therefore, I grant the landlord's request to recover liquidated damages of \$775.00 from the tenant.

As for the landlord's request to charge an administrative fee and GST to the tenant pursuant to the landlord's "standard practice" to charge such amounts if an amount is outstanding at the end of the tenancy, I find this fee is not permitted under the Act or Regulations. Under the Act a landlord may not charge fees unless those fees are permitted under the Residential Tenancy Regulations. Non-refundable fees a landlord may charge a tenant are provided under section 7 of the Regulations. The permissible fees are as follows:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;

- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

While section 7(1)(d) provides for an administrative fee of \$25.00 the fee must be for a returned cheque or the late payment of rent. I did not hear that a cheque was returned. Further, the landlord claimed the amount outstanding by the tenant was for liquidated damages which is a different provision than the requirement to pay rent on time. Therefore, I find the landlord did not establish an entitlement to recover an administrative fee in these circumstances and I dismiss this claim.

Since the landlord was largely successful in establishing an entitlement to compensation from the tenant with this Application, I award the landlord recovery of the \$50.00 filing fee paid by the landlord.

As provided under section 72 of the Act, I authorize and order the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision. As already explained in this decision I have made no finding as to whether the tenant is entitled to doubling of the security deposit and I leave it upon the Arbitrator hearing the tenant's Application, if she pursues a claim for doubling of the security deposit, to make that determination.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Liquidated damages	\$775.00
Filing fee	50.00
Less: security deposit	<u>(387.50)</u>
Monetary Order for landlord	\$437.50

Conclusion

The landlord has been authorized to retain the tenant's security deposit in partial satisfaction of the liquidated damages owed by the tenant and the landlord has been provided a Monetary Order for the balance owing of \$437.50 to serve and enforce upon the tenant.

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: April 29, 2016

Residential Tenancy Branch