



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord participated in the teleconference hearing, but the tenants did not call into the hearing. The landlord submitted evidence that they served the tenants with the application for dispute resolution and notice of hearing by registered mail sent on September 5, 2015. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the tenants were deemed served with notice of the hearing on September 10, 2015, and I proceeded with the hearing in the absence of the tenants.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on May 1, 2014 as a fixed term tenancy that ended on April 30, 2015. The first tenancy agreement contains a liquidated damages clause that indicates that if the tenants end the tenancy before the end of the fixed term they must pay the landlord "the sum equal to one and a half of the then current monthly rent." The monthly rent under the first agreement was \$1,425.00. At the outset of the tenancy, the tenants paid the landlord a security deposit of \$712.50.

The parties then entered into a second fixed term beginning May 1, 2015 and set to end on August 31, 2015. The second tenancy agreement contains a clause indicating that the monthly rent would increase to \$1,535.00 per month, and all terms in the previous tenancy agreement would carry over into the new agreement.

The landlord stated that the tenants did not pay the increase of \$55.00 to “update” their security deposit. The landlord stated that the tenants did not pay July 2015 rent, and they vacated the rental unit on July 6, 2015. The landlord provided evidence to show that the tenants did not clean the rental unit before vacating.

The landlord claimed the following:

- 1) \$1,535.00 for July 2015 rent;
- 2) \$25.00 for a late payment fee, as per the tenancy agreement; for July 2015;
- 3) \$400.00 for liquidated damages;
- 4) \$50.00 for cleaning the suite and \$25.00 for cleaning the grounds;
- 5) \$148.37 for drapery dry cleaning; and
- 6) \$107.94 for re-keying the locks, as the tenants did not return one set of keys.

In support of their claim, the landlord submitted evidence including a copy of the original tenancy agreement and the subsequent agreement; photographs of areas of the unit and grounds that required cleaning; and invoices and receipts.

Analysis

I accept the landlord’s undisputed evidence that the tenants failed to pay rent for July 2015, and I grant the landlord \$1,535.00 for July 2015 rent and \$25.00 for the late payment fee. I also accept the landlord’s evidence regarding cleaning, drapery cleaning and lock re-keying.

I find that the landlord is not entitled to the amount claimed for liquidated damages, as the clause in the tenancy agreement is not sufficiently clear and specific. A liquidated damages clause should specify the dollar amount, which this clause does not. Further, the amount of rent changed between the first agreement and the second agreement, and a liquidated damages amount must be an agreed-upon amount for the genuine pre-estimate of the costs of re-renting. I therefore find that the liquidated damages clause in the tenancy agreement is void for uncertainty.

As the landlord’s application was partly successful, they are entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

The landlord is entitled to \$1,916.31. I order that the landlord retain the security deposit of \$712.50 in partial satisfaction of the claim and I grant the landlord an order under

section 67 for the balance due of \$1,203.81. This order may be filed in the Small Claims Court and enforced as an order 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: April 1, 2016

Residential Tenancy Branch