



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, liquidated damages, removal of garbage, cleaning, yard work and the filing fee. The landlord also applied to retain the security deposit and pet deposit in partial satisfaction of her claim.

The landlord sent a copy of her application and the notice of hearing to the tenant by registered mail on October 19, 2016, to the forwarding 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, liquidated damages, removal of garbage, cleaning, yard work and the filing fee? Is the landlord entitled to retain the security and pet deposits?

Background and Evidence

The tenancy started on July 01, 2015 for a fixed term of two years. The monthly rent was \$1,900.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$950.00 and a pet deposit of \$950.00. The landlord stated that on July 28, 2016 the tenant provided notice to end the tenancy and moved out on September 28, 2016 without paying rent for September 2016.

The landlord filed a copy of the tenancy agreement into evidence. A term in the agreement requires the tenant to pay liquidated damages in the amount of \$950.00 if the tenant ends the tenancy prior to the end date of the fixed term. Move in and move out inspection reports were filed into evidence. The tenant acknowledged the

conditions of the rental were as written in the reports. The tenant also acknowledged that cleaning, garbage removal and yard maintenance were required to be done. The landlord filed copies of invoices into evidence for the work done in the rental unit to prepare it for the next tenant. The landlord also filed copies of an advertisement dated August 09, 2016 advertising the availability of the rental unit. The landlord testified that a new tenant was found for November 01, 2016.

The landlord is claiming the following:

1.	Liquidated damages	\$950.00
2.	Loss of income for October 2016	\$1,900.00
3.	Unpaid rent for September 2016	\$1,900.00
4.	Garbage disposal	\$128.10
5.	Cleaning	\$210.00
6.	Carpet cleaning	\$221.00
7.	Yard maintenance	\$180.00
7.	Filing fee	\$100.00
	Total	\$5,589.10

Analysis

1. Liquidated damages - \$950.00
2. Loss of income for October 2016 - \$1,900.00

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 July 28, 2016. The tenant moved out on September 28, 2016.

Based on the tenancy agreement filed into evidence, I find that the tenant was in a fixed term tenancy with an end date of June 30, 2017. 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 tenancy agreement addresses “*Liquidated Damages*” and states the following:

If the Tenant ends or gives notice to end tenancy before the end of the original Term of this Lease, or any subsequent fixed term or if the Tenant is in breach of the Residential Tenancy Act or a material term of this Lease that causes the Landlord to end the tenancy before the end of the original Term or subsequent fixed term (“Early Termination”), then the Tenant must pay the sum of \$950.00 to the Landlord as liquidated damages and not as a penalty (Liquidated Damages”). The Liquidated Damages is an agreed pre-estimate of the Landlord’s administrative costs of advertising and re-renting the Premises as a result of the Early Termination. Payment of Liquidated Damages does not preclude the Landlord from exercising any further right to recovering other damages from the Tenant.

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 \$950.00.

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 \$950.00 and dismiss her claim for loss of income.

3. Unpaid rent for September 2016

I accept the landlord’s testimony that the tenant failed to pay rent for September 2016 and accordingly I award the landlord her claim.

4. Garbage disposal - \$128.10
5. Cleaning - \$210.00
6. Carpet cleaning - \$221.00
7. Yard maintenance - \$180.00

The landlord has filed adequate evidence to support her claim for the above items. I find that the condition reports indicate that the unit required cleaning, yard work and garbage removal. The invoices filed into evidence support the landlord's claim.

8. Filing fee - \$100.00

Since the landlord has proven most of her claim, I award her the filing fee.

Overall the landlord has established a claim for the following:

1.	Liquidated damages	\$950.00
2.	Loss of income for October 2016	\$0.00
3.	Unpaid rent for September 2016	\$1,900.00
4.	Garbage disposal	\$128.10
5.	Cleaning	\$210.00
6.	Carpet cleaning	\$221.00
7.	Yard maintenance	\$180.00
7.	Filing fee	\$100.00
	Total	\$3,689.10

Overall the landlord has established a claim of \$3,689.10. I order that the landlord retain the security deposit of \$950.00 plus the pet deposit of \$950.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,789.10. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for the amount of **\$1,789.10**

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 19, 2017

Residential Tenancy Branch