



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

On April 10, 2017, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords and Tenant, W.Z. attended the teleconference hearing. The Tenant was assisted by an interpreter and legal counsel. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. The parties testified that they exchanged each other's documentary evidence that was submitted to the Residential Tenancy Branch.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Landlord previously applied for an ex-parte hearing seeking an order of possession and a monetary order for unpaid rent based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. On March 21, 2017, the Landlord was granted an order of possession for the rental unit and a monetary order for unpaid March 2017, rent.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to liquidated damages?
- Is the Landlord entitled to compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 20, 2016, as a two year fixed term tenancy to continue until December 31, 2018. Rent in the amount of \$2,200.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a security deposit of \$1,100.00.

The parties testified that the Tenants moved out of the rental unit on April 19, 2017, with the assistance of a bailiff.

The Landlord is seeking compensation for the following claims:

April 2017 Rent	\$2,200.00
Utilities	\$259.00
Early Termination	\$4,400.00
Non Sufficient Funds	\$25.00
Late Rent Payments	\$75.00
Repairs and Cleaning	\$1,100.00
Documents	\$25.10
Filing fees	\$200.00

April 2017 Rent

The Landlord testified that the Tenant failed to pay the rent and forced the Landlord to obtain an order of possession and to hire a bailiff to remove the Tenant from the rental unit. He testified that the Tenant moved out of the rental unit on April 19, 2017, and the Landlord never received any rent for the month of April 2017. The Landlord is seeking \$2,200.00.

In response, the Tenant's counsel submitted that the Tenant did not pay any rent for April 2017, and that April rent should be pro-rated for 19 days.

Utilities \$259.00

The Landlord testified that water and garbage collection were not included in the rent. The Landlord submitted that he is billed yearly for water and garbage collection. He submitted that water and garbage amounts to \$64.75 per month and the Tenant did not pay any amount towards these utility costs for the four months he lived in the rental unit. The Landlord provided a copy of a utility bill from the city in the yearly amount of \$777.00.

In response, the Tenant's counsel submitted that the utility invoice is a utility tax. She submitted that the Tenant has paid his utilities.

The Tenant testified through the interpreter that he never received any garbage or water bills.

The Landlord responded that water and garbage are not included in the rent and the invoice says it's a utility bill and is not a tax.

Early Termination of Lease \$4,400.00

The Landlord testified that the tenancy agreement contains an addendum written in Chinese. The Landlord testified that the addendum contains a liquidated damages clause that requires the Tenant to pay two months' rent if the tenancy is ended early. The Landlord provided a copy of a translated version of the tenancy addendum.

In response, the Tenant's counsel submitted that the liquidated damages amount is a penalty. She submitted that the Landlord ended the tenancy and the Landlord is not entitled to compensation because the Landlord ended the contract.

The Landlord responded by stating that the Tenant stopped the tenancy agreement by not paying the rent.

Non-sufficient Funds Fee \$25.00

The Landlord testified that a cheque from February 2017, was returned to the Landlord by the bank as non-sufficient funds. The Landlord is seeking to recover a \$25.00 bank fee.

In response, the Tenant submitted that he issued a new cheque and paid the rent. He does not dispute the monetary claim of the Landlord.

Late Rent Payments \$75.00

The Landlord is seeking \$75.00 for three late rent payments. The Landlord testified that the tenancy agreement does not include a late rent payment clause.

The Landlord's claim for \$75.00 is dismissed. The Residential Tenancy Regulation section 7(2) does not permit a late fee unless the tenancy agreement provides for the fee.

Repairs and Cleaning \$1,100.00

The Landlord testified that he wants to keep the security deposit for the cost of repairs and cleaning of the rental unit. The Landlord applied for dispute resolution on April 10, 2017, prior to the date the Tenant moved out of the rental unit.

In response, the Tenant's counsel submitted that the Landlord had 15 days to apply to keep the deposit or otherwise return the deposit to the Tenant.

The Tenant testified through the interpreter that he did not provide his forwarding address in writing to the Landlord.

The Tenants counsel submitted that the Tenant was evicted and therefore he could not clean or perform repairs prior to moving out.

Documents \$25.10

The Landlord is seeking \$25.10 for the cost of preparing documents for this hearing.

The Landlord's claim is dismissed. The Act permits compensation where there has been a breach, and there is a loss. The Act does not specifically allow an award for preparing documents or mailing documents. I find that preparing documentation is a cost of doing business as a Landlord.

Filing Fees \$200.00

The Landlord is seeking to recover the \$100.00 filing fee for the cost of this hearing and the \$100.00 filing fee from a previous hearing.

Analysis

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. *Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;*
2. *Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.*

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the Act or tenancy agreement. Whether or not the breach is fundamental depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim.

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-complaint party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

April 2017, Rent

I find that the Tenant breached the tenancy agreement by failing to pay the rent due. The Landlord is entitled to compensation for any loss of rent up to the time the Tenant could have legally ended the tenancy. I award the Landlord \$2,200.00 for April 2017 rent.

Utilities

I accept the Landlord's submissions that the invoice he provided is a utility bill and not a tax bill. The tenancy agreement does not include water and garbage in the rent and the Tenant testified that he never received any garbage or water bills. I find that the Tenant is responsible to pay for the water and garbage costs for the four month period that he lived in the rental unit.

I grant the Landlord a monetary award of \$259.00.

Early Termination

I find that the liquidated damages clause in the tenancy agreement is not an enforceable term. The liquidated damages amount of \$4,400.00 does not appear to be a genuine pre-estimate of the Landlord's costs to re-rent the unit. I find that the amount is based on the two times the monthly rent. I find that the structure of the tenancy agreement stipulating the amount of two months' rent is excessive and is a penalty. The Landlord is already entitled to claim for lost rent if the unit is not re-rented. The Landlord's claim for \$4,400.00 is dismissed.

NSF Fee

I grant the Landlord the amount of \$25.00 for the bank fee for the NSF cheque from February 2017.

Repairs and Cleaning

The Landlord provided insufficient evidence that the Tenant left the rental unit unclean or damaged. The Landlord did not provide any photographs of damage, or receipts for cleaning or repairs. There is no evidence of the damage or loss in question.

While I acknowledge that the Tenant testified that he did not have an opportunity to clean the rental unit, the Landlord has not proven that he has suffered a loss and has not established the value of any loss.

Since there was an infraction on the part of the Tenant with respect to leaving the rental unit unclean; but no significant loss has been proven, I award the Landlord a nominal amount of \$50.00. The remainder of the Landlord's claim for cleaning and repairs is dismissed.

Security Deposit

I find that the Landlord was not required to make a claim against the security deposit until he received the Tenant's forwarding address in writing. The Landlord never received a forwarding address in writing from the Tenant. The Landlord applied for dispute resolution seeking unpaid rent and damages on April 10, 2017, and he requested to retain the security deposit. I order that the Landlord can retain the security deposit of \$1,100.00 in partial satisfaction of the Landlord's claim for April 2017, rent.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for this hearing. I have no authority to award the Landlord the cost of the filing fee for the previous hearing. The Landlord's claim for an additional \$100.00 is dismissed.

I find that the Landlord has established a total monetary claim of \$2,584.00.00 as follows:

April 2017, Rent	\$2,200.00
Utilities	\$259.00
Non Sufficient Funds	\$25.00
Filing fees	\$100.00

After setting off the security deposit of \$1,100.00 towards the claim of \$2,584.00, I find that the Landlords are entitled to a monetary order in the amount of \$1,484.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement and the Landlord obtained an order of possession for the rental unit prior to this hearing.

The Tenant vacated the rental unit on April 19, 2017, and failed to pay the rent and utilities owing under the tenancy agreement.

The Landlord established a claim in the amount of \$2,584.00 and is authorized to keep the security deposit of \$1,100.00 in partial satisfaction of the claim.

I grant the Landlord a monetary order in the amount of \$1,484.00 for the balance of the claim.

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 19, 2017

Residential Tenancy Branch