



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlords' application for a Monetary Order for unpaid and/or loss of rent, liquidated damages, cleaning; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlords provided a registered mail receipt, including tracking number; a print-out from the Canada Post website; and, emails exchanged between the landlord and tenant as proof the landlords sent the hearing documents and evidence to the tenant at his address of residence on March 16, 2017 and the documents were delivered on March 20, 2017. I was satisfied that the tenant was duly notified of this proceeding and I continued to hear from the landlord without the tenant present.

During the hearing the landlord requested that the landlords' claim be reduced to reflect that the landlords were successful in re-renting the unit for the month of May 2017. I amended the landlords' application accordingly since the request is beneficial to the tenant.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover the amounts claimed against the tenant, as amended?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The parties executed a written tenancy agreement on February 22, 2017 for a three month fixed term tenancy set to commence on March 1, 2017 and end on May 31, 2017 for the monthly rent of \$1,000.00 due on the first day of every month. The tenancy agreement provides for a liquidated damages clause in the amount of \$500.00.

The rental unit was described as a fully furnished loft, complete with linens.

The tenant was provided early occupancy on February 24, 2017 and the tenant paid pro-rated rent for the days of February 24 – 28, 2017. The tenant also paid a \$500.00 security deposit.

On February 28, 2017 the tenant notified the landlord via email that he had left the rental unit and would not be returning the unit as he had gone back home due to an emergency. The landlords responded by notifying the tenant that he would be in breach of their fixed term tenancy agreement and requested the tenant pay rent for March 2017 and give 30 days of notice. The tenant did not.

The landlords placed advertisements for the rental unit on February 28, 2017. On March 21, 2017 the landlords secured a replacement tenant for a tenancy set to commence May 1, 2017 at the same monthly rent of \$1,000.00.

The landlords seek to recover unpaid and/or loss of rent for the months of March 2017 and April 2017; liquidated damages of \$500.00; and, \$25.00 for cleaning since the tenant did not clean the linens or remove the trash from the rental unit.

As evidence for this proceeding the landlords provided copies of: the tenancy agreement; condition inspection reports; advertisements; and, several emails exchanged between the parties.

Analysis

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlords has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant is in a fixed term tenancy agreement but ends the tenancy early, the tenant may be held responsible to pay rent to the landlords for the remainder of the fixed term provided the landlords take reasonable steps to mitigate losses.

In this case, the tenant was required to pay rent for the period of March 1, 2017 through May 31, 2017 in the amount of \$1,000.00 for each month and did not. I was presented no evidence to suggest the tenant had a legal right to withhold the rent or otherwise end the tenancy early. I am also satisfied that the landlords took reasonable steps to advertise and show the rental unit to prospective tenants. Therefore, I grant the landlords' request to recover unpaid and/or loss of rent from the tenant for the months of March 2017 and April 2017.

Upon review of the tenancy agreement, I am satisfied the tenancy agreement contains a valid liquidated damages clause intended to off-set the landlords' efforts to re-rent the unit due to the tenant's failure to fulfill the fixed term agreement and I grant the landlords' request to charge the tenant \$500.00 for liquidated damages.

The landlords have satisfied me by the unopposed evidence that the rental unit required cleaning after the tenant vacated the unit and I find the landlords' request for \$25.00 to be reasonable. Therefore, I grant the landlords' request to recover that amount from the tenant for cleaning.

Given the landlords success in this application, I further award the landlords recovery of the \$100.00 filing fee they paid for this application.

I authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords in this decision.

In light of all of the above, the landlords are provided a Monetary Order in the net amount calculated below to serve and enforce upon the tenant.

Unpaid and/or loss of rent: March 2017 and April 2017	\$2,000.00
Liquidated damages	500.00
Cleaning	25.00
Filing fee	100.00
Less: security deposit	<u>(500.00)</u>
Monetary Order	\$2,125.00

Conclusion

The landlords are authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance owing of \$2,125.00 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: October 03, 2017

Residential Tenancy Branch