



Dispute Resolution Services

Page: 1

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 pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, liquidated damages, return of the move in bonus, cost of cleaning the carpet and window coverings and for the filing fee. The landlord also applied to retain the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages, return of the move in bonus, cost of cleaning the carpet and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on July 01, 2017 for a fixed term ending June 30, 2018. The rent was \$1,550.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$775.00. The landlord filed a copy of the tenancy agreement that contains a clause regarding liquidated damages as follows:

"If the tenant breaches a material term of this agreement that causes the landlord to end the tenancy before the end of any fixed term, or 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 \$500.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit."

Payment of such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated.”

The landlord also referred to a clause in the tenancy agreement that states:

“Tenant(s) agree that move-in bonus will be reversed when breaking Lease”

The landlord testified that the tenant received a move-in bonus of \$135.00 which the landlord was claiming because the tenant ended his tenancy prior to the end date of the fixed term.

On December 14, 2017, the tenant gave the landlord written notice to end the tenancy effective January 31, 2018. The landlord testified that he started looking for a new tenant by advertising the availability of the rental unit on the day he received the tenant's notice to end tenancy. The landlord did not file copies of the advertisements.

The tenant testified that he was away for most of December and returned on January 06, 2018 and the first time the unit was shown to prospective tenants was on January 15, 2018. The tenant gave the landlord permission to show the unit in December while he was gone. The tenant stated that he did not know whether the landlord had any showings in his absence. The landlord also was not able to provide any information regarding showings in December 2017 or showings prior to January 15, 2018.

Move in and move out inspections were conducted and the landlord filed a report into evidence. The landlord stated that the windows and window coverings were not cleaned by the tenant. The tenant stated that he had cleaned the windows but did not clean the blinds because he had not used them. The inspection report indicates that the windows, coverings and screens in the bedroom were dirty. The report also shows that the windows, coverings and screens in the living room were initially check marked as clean and then “DT” was overwritten indicating that they were dirty. The tenant has not initialled this change to confirm that it was done in the presence of the tenant.

The landlord filed a copy of an invoice dated February 08, 2018, for the cleaning of the windows (\$21.00) and coverings (\$60.00) in the total amount of \$81.00. The landlord did not file photographs to support his testimony that the windows and window coverings were left in a dirty condition at the end of tenancy.

The landlord is also claiming \$60.00 for the cost of cleaning the carpet and has filed a copy of an invoice dated February 19, 2018 for the amount of \$63.00.

The tenant stated that he cleaned the carpet but agreed that he did not shampoo the carpet. The move out inspection report does not indicate that the carpet was dirty.

The tenant stated that he moved out because he lost his job and could not afford to live in the rental unit.

The landlord stated that he found a tenant for February 17, 2018 and is claiming the loss of income for the first half of February 2018.

The landlord is claiming the following:

1.	Loss of income for February 2018	\$885.00
2.	Liquidated damages	\$500.00
3.	Carpet cleaning	\$63.00
4.	Window cleaning	\$21.00
5.	Cleaning of blinds	\$60.00
6.	Move in bonus	\$135.00
7.	Filing fee	\$100.00
	Total	\$1,764.00

Analysis

1. Loss of income for February 2018 - \$885.00

Section 45 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 is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of the both parties, I find that, on December 14, 2017, the tenant gave notice to end the tenancy effective January 31, 2018 which is prior to the end date of the fixed term. By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non –compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. The landlord testified that he started making efforts to find a tenant on the same date that the tenant provided the notice to end tenancy, by advertising the availability of the rental unit. However the landlord did not file copies of the advertisements. The landlord also did not provide information about any showings.

The tenant testified that he was away in December and after his return on January 06, 2018, there were no showings before January 15, 2018.

On a balance of probabilities and in the absence of both documentary evidence of the advertisements and testimony about showings prior to January 15, 2018, I find that it is more likely than not that the landlord did not actively show the rental unit prior to January 15, 2018.

By conducting showings to prospective tenants after January 15, 2018, it was unlikely that a tenant would be found for the February 01, 2018. Therefore I find that the landlord did not do whatever is reasonable to minimize the loss of income that he suffered and accordingly his claim for loss of income is dismissed.

2. Liquidated damages - \$500.00

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.

In this case, the tenant signed in agreement to paying liquidated damages of \$500.00 in the event that he ended the lease prior to the end of the fixed term. Therefore I award the landlord \$500.00 for liquidated damages.

3. Carpet cleaning - \$63.00

Regarding the cost of carpet cleaning, the testimony of both parties was contradictory. The tenant stated he cleaned the carpet and the landlord stated that the carpet needed cleaning. *Residential Tenancy Policy Guideline#1* states that the tenant is responsible for periodic cleaning of the carpet to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

In this case the tenancy lasted for seven months. Based on the testimony of the tenant, I find that on a balance of probabilities, it is more likely than not that the tenant cleaned the carpet but did not clean it to the standards of the landlord. In addition the move out inspection report does not indicate that the carpet was dirty.

Since the tenancy was not one year in length and based on policy guideline #1 and the move out condition inspection report, I find that the tenant is not responsible for the cost of steam cleaning the carpet.

4. Window cleaning - \$21.00
5. Cleaning of blinds - \$60.00

The tenant testified that he cleaned the windows but agreed that he did not clean the blinds. As mentioned above, I find that there is a discrepancy in the move out inspection report with regard to cleaning of the windows, coverings and screens in the living room. Since the tenant stated that he had cleaned the windows and the landlord did not file any photographs to show that the windows were dirty, I dismiss the landlord's claim for cleaning the windows. However the tenant agreed that he had not cleaned the blinds and therefore I award the landlord \$60.00 towards his claim.

6. Move in bonus - \$135.00

The tenant also signed in agreement that he would return the move in bonus of \$135.00 if he ended the lease prior to the end of the fixed term. Therefore I award the landlord this amount.

7. Filing fee - \$100.00

Since the landlord has proven a portion of his case, I find that he is also entitled to the recovery of the filing fee, in the amount of \$100.00.

Overall the landlord has established a claim as follows

1.	Loss of income for February 2018	\$0.00
2.	Liquidated damages	\$500.00
3.	Carpet cleaning	\$0.00
4.	Window cleaning	\$0.00
5.	Cleaning of blinds	\$60.00
6.	Move in bonus	\$135.00
7.	Filing fee	\$100.00
	Total	\$795.00

I order that the landlord retain the security deposit of **\$775.00** 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 **\$20.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit of **\$775.00**.

I grant the landlord a monetary order in the amount of **\$20.00**.

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 24, 2018

Residential Tenancy Branch