



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application made February 14, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence, and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on May 1, 2017 on a fixed term to end April 30, 2018. Rent of \$1,585.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$792.50 as a security deposit. The Parties mutually conducted a move-in condition inspection with completed inspection report copied to the Tenants. On January 20, 2018 the Tenants gave notice to end the tenancy for January 31, 2018 and moved out on that date. The Parties mutually conducted a move-out condition inspection with completed inspection report copied to the Tenants. The Tenants provided their forwarding address on the move-out condition report dated January 30, 2018. The tenancy agreement

provides for late rent fees of \$25.00 and NSF fees of \$25.00. The tenancy agreement provides for liquidated damages as follows:

“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 term (“Early Termination”), then the Tenant must pay the sum of \$792.50 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.”

The Landlord states that the Tenants failed to leave the unit reasonably clean and claim \$120.00 for this cleaning. The Tenants do not dispute this claim.

The Landlord states that the Tenants agreed to pay the liquidated damages if they ended the tenancy before the fixed term. The Landlord states that the Tenants ended the fixed term early by moving out of the unit and claims the liquidated damages amount of \$792.50.

The Landlord states that the Tenants failed to give a month’s notice to end the tenancy and claims unpaid rent for February 2018 of \$1,585.00. The Landlord also claims \$50.00 for two late fees and \$50.00 for two NSF cheques in relation to unpaid February 2018 rent. The Tenants state that they moved out of the unit due to the Landlord’s breach of the Tenants’ right to quiet enjoyment.

Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is no longer payable after a tenant vacates a unit. As the Tenants moved out of the unit on January 30, 2018 I find that rent was no longer payable after this date. However the Tenants remained liable for lost rental income to the end of the fixed term date despite the

Landlord's acts or negligence. I therefore consider the Landlord's claim for unpaid rent as a claim for lost rental income and deal with this claim below. As the Landlord claims for late and NSF fees are in relation to rent for February 2018 and as rent was not payable for this month I dismiss the Landlord's claims for these fees.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable as damages for that breach. In this instance although the liquidated damages clause uses administrative costs of re-renting to describe the amount being quantified, it does not make a difference to the outcome as the amount becomes payable upon acts that result in the early end of the tenancy: either the Tenant ends the tenancy early or by another breach causes the Landlord to end the tenancy early. The liquidated damages amount limits or determines in advance the damages flowing from the early end of the tenancy. The clause further provides that "Payment of Liquidated Damages does not preclude the Landlord from exercising any further right to recovering other damages from the Tenant." I note that these other damages must flow from different breaches of the tenancy agreement such not paying rent while occupying the unit or not leaving the unit clean and undamaged at the end of a tenancy. These amounts are not damages that would flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damages amount.

While lost rental income could arise from the lack of notice in other situations, as the lost rental income in this situation is a damage that flows from an early end of tenancy, as the damages arising from an early end of tenancy have been determined by agreement in advance at \$792.50, and as the Landlord has made a conflicting claim for liquidated damages and for lost rental income for February 2018, I resolve the conflict in favour of the Tenant and find that the Landlord has only substantiated **\$792.50** for liquidated damages. I dismiss the Landlord's claim for unpaid rent or lost rental income for February 2018. As no rent was payable for February 2018 I dismiss the late rent and NSF fees claimed for February 2018.

As the Tenants do not dispute the Landlord's claim for **\$120.00** I find that the Landlord has substantiated an entitlement to this amount. As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total

entitlement of **\$1,012.50**. Deducting the security deposit plus zero interest of **\$792.50** from this amount leaves **\$220.00** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$792.50.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining entitlement of **\$220.00**. If necessary, 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: September 12, 2018

Residential Tenancy Branch