



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 12 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on February 27, 2018 he forwarded the landlord's application for dispute resolution hearing package via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application and supporting documents on March 4, 2018, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the tenant authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and the landlord's testimony, this tenancy began on October 1, 2017 on a fixed term until September 30, 2019 at which time the tenancy was to continue on a month-to-month basis. Rent in the amount of \$3,400.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,700.00 at the start of the tenancy, which the landlord still retains in trust.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") was issued to the tenant on January 8, 2018 by way of posting to the rental unit door where the tenant was residing. The notice indicated an effective move-out-date of January 22, 2018. The tenant did not vacate the unit by January 22, 2018, instead on January 23, 2018, the tenant paid rent arrears in the amount of \$2,000.00. On February 1, 2018 the landlord and tenant performed a move-out inspection report, the tenant provided her forwarding address and the tenant vacated the unit.

The landlord re-rented the unit effective February 15, 2018 at a reduced rental rate of \$3,350.00 per month.

The landlord seeks compensation in the amount of \$3,663.37, including the following;

Number	Item	Amount
1	Rent	\$2,275.00
2	Liquidated damages	\$420.00
3	Carpet cleaning	\$105.00
4	Final cleaning	\$210.00
5	Wall repairs	\$200.92
6	Support brackets	\$2.45
7	Visitor parking pass	\$50.00
8	Fireplace delivery	\$150.00

9	Moving fee	\$150.00
	Total Claim	\$3,663.37

The landlord seeks to recover the loss of rent between February 1 and 14, 2018 in the amount of \$1,700.00 (\$3,400.00 rent/28 days = \$121.42/day x 14 days). Because the unit rented for a reduced rate, the landlord seeks to recover this loss in the amount of \$575.00 (\$50.00/month x 11.5 months). In total, the landlord seeks \$2,275.00 in loss of rent. The landlord did not provide a copy of the new tenancy agreement effective February 15, 2018.

The landlord testified that the tenant ended the fixed term tenancy as a result of nonpayment of rent and therefore seeks liquidated damages of \$400.00 plus applicable 5% tax for a total amount of \$420.00. The landlord provided a copy of the tenancy agreement.

The landlord submitted photographs, copies of the move-in and move out condition inspection reports in addition to invoices for the carpet cleaning, final cleaning, wall repairs, support brackets and visitor parking pass.

The landlord testified that during the tenancy, the parties agreed that the tenant could remove the electrical fireplace from the unit, but was obligated to return the fireplace upon vacating. The landlord testified that the tenant did not leave the fireplace in the unit and because of this; three separate trips were made to the unit at the cost of \$50.00 each, to return the fireplace. The landlord seeks to recover the moving fee in the amount of \$150.00 paid to the strata.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

1. Rent

The landlord claims damages for loss of rent between February 1 and 14, 2018. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if she withheld January rent and later vacated in response to a 10 Day Notice. Based on the landlord's undisputed testimony, I am satisfied that the landlord mitigated the loss by advertising the unit promptly and securing a new tenancy effective February 15, 2018. Accordingly, I find the landlord is entitled to recover loss of February rent in the amount of \$1,700.00. In regards to the landlord's claim for the remainder rental loss of \$575.00, I find the landlord has failed to substantiate the amount of this loss with a copy of the new tenancy agreement. Therefore I dismiss the landlord's claim to recover \$575.00 in loss of rent, without leave to reapply.

2. Liquidated damages

Because the tenant in effect ended the tenancy contrary to the *Act*, and the parties signed an agreement that included a liquidated damage clause, the tenant may be held liable for the amount stipulated in that clause, even if the landlord did not incur this amount of actual loss or damages.

However, in order to enforce a liquidated damage clause in a tenancy agreement or addendum, it must first be determined whether the clause is valid. Specifically it must be determined whether the amount agreed to is a genuine pre-estimate of the loss at the time the contract was entered into or a whether the amount constitutes a penalty.

Pursuant to Residential Tenancy Policy Guideline #4 Liquidated Damages, I find the liquidated damage clause in the tenancy agreement does not constitute a penalty as it is not extravagant in comparison to the greatest loss that could follow a breach, it does not indicate failure to pay results in a greater amount having to be paid and it does not require a single lump sum to be paid on occurrence of several events, some trivial some serious.

Instead, I find the liquidated damage clause is a genuine pre-estimate of the loss at the time the contract was entered into, thereby making the clause valid. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of \$420.00 from the tenant.

3-7. Carpet cleaning, final cleaning, wall repairs, support brackets, visitor parking pass

Section 37 of the *Act*, establishes that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Upon review of the condition inspection reports, photographs, invoices and undisputed testimony of the landlord I am satisfied that the tenant left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find the landlord is entitled to recover damages for carpet cleaning, final cleaning, wall repairs, support brackets and visitor parking pass in the amount of \$568.37.

8-9. Fireplace delivery, moving fee

While I am satisfied that that the tenant did not return the fireplace to the unit, I find the landlord failed to verify the loss of the fireplace delivery with a receipt. Further, the landlord's claim for moving expenses was not substantiated by a copy of the strata rules or moving invoice. For these reasons I dismiss this portion of landlord's claim, without leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to half the filing fee in the amount of \$50.00, for a total award of \$2,738.37.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,700.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,038.37.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,038.37 for the following items:

Number	Item	Amount
1	Rent	\$1,700.00
2	Liquidated damages	\$420.00
3	Carpet cleaning	\$105.00
4	Final cleaning	\$210.00
5	Wall repairs	\$200.92
6	Support brackets	\$2.45
7	Visitor parking pass	\$50.00
	Filing fee	\$50.00

	Less security deposit	(\$1,700.00)
	Total Monetary Order	\$1,038.37

The landlord's application for monetary compensation for rental loss in the amount of \$575.00, fireplace delivery in the amount of \$150.00 and moving fee in the amount of \$150.00 are dismissed without leave to reapply.

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 25, 2018

Residential Tenancy Branch