



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mosaic DRF Seven Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on June 15, 2020. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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;

The Landlord also filed an amendment on January 23, 2020, seeking to adjust the monetary amounts sought, for damage and loss under the Act. The Landlord specified that the Tenant moved out on January 15, 2020, which is the same day he filed the initial application. Given the Tenant moved out, the Landlord no longer requires an order of possession. This item is dismissed, without leave. The only remaining issues are regarding what monetary compensation (for rent/damage or loss) the Landlord is entitled to, and whether they are entitled to retain the security and pet deposits.

The Landlord explained that they sent their Notice of Hearing, and all amendments/evidence, by registered mail, in two different packages. The Landlord provided proof of mailing to show they sent these packages on January 28, 2020, and February 3, 2020, to the address the Tenant put on the move-out inspection report. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed served with these packages 5 days after they were mailed, which is February 2, 2020, and February 8, 2020, respectively.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security and pet deposit to offset the amounts owed by the Tenant?

Background and Evidence

The Landlord provided a copy of the lease agreement into evidence, which shows that the Tenant was under a 1-year fixed term tenancy agreement from August 15, 2019, until August 31, 2020. Monthly rent was set at \$1,850.00, and was due on the first of the month, and the Landlord still holds a security deposit of \$925.00 and a pet deposit of \$925.00.

The Landlord stated that he believes the Tenant lost his job, and ran into financial troubles in late 2019. The Landlord explained that the Tenant's rent withdrawal bounced on January 1, 2020, and on January 15, 2020, the Landlord received written Notice (by way of the lease break agreement) that the Tenant was going to move out. Prior to this point it was only informal conversations about having to move out due to not having money. The Tenant moved out and a condition inspection report was completed on January 15, 2020.

The Landlord provided a monetary order worksheet speaking to 7 different items as follows:

- 1) \$15.00 – parking pass replacement

The Landlord explained that the Tenant rented a parking spot, under a separate "parking agreement", a copy of which was provided into evidence. The Landlord stated that the Tenant never returned the parking pass, which cost the Landlord \$15.00 to replace. The Landlord is seeking to recover this amount.

- 2) \$119.70 – General Cleaning
- 3) \$105.00 – Carpet Cleaning

The Landlord explained that the Tenant moved out in such a rush that he did not clean anything before he left. The Landlord stated that the rental unit required 4 hours of cleaning by their in-house cleaners, which cost \$31.50 per hour plus GST. The Landlord further stated that the Tenant had a pet, and did not clean the carpets before he left, which cost the Landlord the above amount, which was paid to their in-house cleaning staff. No receipts were provided, but the condition inspection report shows the Tenant signed and agreed to the above items at the end of the tenancy.

4) \$2,350.00 – Lease Break Fee (“Liquidated Damages”)

The Landlord pointed to clause #7 of the tenancy agreement, which states the following:

7. The Tenant will pay and reimburse the Landlord’s Agent for the following. If the Tenant ends the fixed term tenancy before the end of the original term as set out in the Residential Tenancy Agreement, the Landlord may, at the Landlord’s option, treat this Agreement as being at an end. In such event, the sum of one month’s rent (\$ 1850) plus an additional \$500.00 plus applicable taxes will be paid by the Tenant to the Landlord as liquidated damages, not as a penalty, to cover the administration costs of re-renting the rental unit. The Landlord and Tenant acknowledge and agree that the payment of liquidated damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damage to the rental unit or residential property and damages that remain unliquidated.

The Landlord stated that this amount helps pay for their marketing team, the leasing team, and the operations team. The Landlord explained that when a unit is rented for a fixed term, the costs are amortized over the year, and when the lease is broken, it ends up costing the company money to repost and re-rent.

5) \$150.00 – Move-out fee

The Landlord stated that, as per term #5 in the tenancy agreement, the Tenant is responsible for paying a move-out fee at the end of the tenancy to help cover the wear and tear on the building. The Landlord stated the Tenant agreed to pay this amount when he signed the tenancy agreement.

6) \$1,850.00 – January rent

7) \$55.00 – Late Rent Fee and NSF fee

The Landlord initially wanted to recover fitness facility fees, and parking fees. However, during the hearing the Landlord amended his application to remove those items, as they were separate parallel agreements, outside of the tenancy agreement. The Landlord is only seeking January rent, in full, because the Tenant didn't give them written Notice until the same day he moved out, on January 15, 2020. The Landlord stated that they immediately re-posted the unit, and signed a new tenancy agreement on January 21, 2020, for the same amount. The new tenants moved in on February 1, 2020. The Landlord is looking to recover January rent, as the Tenant never paid this month, yet lived there until January 15, 2020, and then moved without proper 1-Month Notice, in writing.

Regarding item #7, the Landlord referred me to term #23, which specifies that the Tenant is liable to pay the fees incurred for bounced rent payments. The Landlord explained that the bank charges them a fee, and they have to adjust their accounting accordingly. The Landlord is seeking an NSF fee of \$30.00 and a late rent fee of \$25.00 for the month of January.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I will address the items in the same order as above:

- 1) \$15.00 – parking pass replacement

As stated during the hearing, the Tenant rented a parking spot under a separate parking agreement, which is independent of the tenancy agreement. Parking is not included in rent, and I find I do not have jurisdiction to award either missed parking payments, or parking pass issues, because it was a separate parallel agreement, not covered by the *Act*. I dismiss this item, in full, without leave.

- 2) \$119.70 – General Cleaning
- 3) \$105.00 – Carpet Cleaning

I find the evidence before me sufficiently demonstrates that the Tenant is responsible for above noted cleaning costs (4 hours of general cleaning, plus carpet cleaning). I note the Landlord stated the Tenant did not clean the unit or clean the carpets before he vacated. I further note the Tenant had a dog, and despite agreeing to clean the carpets before he moved out, he did not.

I note that Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises states the following guidance with respect to carpets:

CARPETS

- 1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.*
- 2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.*
- 3. The tenant is responsible for periodic cleaning of the carpets 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. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*
- 4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.*

I find the Landlord's costs and amounts to clean the unit are reasonable and I award these items in full.

- 4) \$2,350.00 – Lease Break Fee ("Liquidated Damages")

The Landlord is seeking 1 month's compensation plus an additional \$500.00 for liquidated damages, as per the tenancy agreement provided. I note that the Tenants have agreed, in writing, as per the tenancy agreement provided into evidence, that the Landlord be paid the above amount in compensation if the lease is ended prior to the end of the agreed upon term.

Residential Tenancy Policy Guideline 4 explains liquidated damages. 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 fixed term by the tenant. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, I find that the liquidated damages clause in the tenancy agreement is not an enforceable term. There is insufficient evidence to show that the liquidated damages amount of \$2,350.00 is a genuine pre-estimate of the Landlord's costs to re-rent the unit. The Landlord only provided general statements regarding the fact that a couple different teams of people within the company had to assist in getting the unit re-rented. I note the Landlord did not provide any explanation as to what the costs were or how much time was invested by the Landlord, with respect to re-renting the unit, or what they expected them to be at the time the agreement was signed. I find it more likely than not that this amount is a penalty, rather than a genuine pre-estimate of the costs associated with re-renting.

The Landlord's claim for \$2,350.00 is dismissed, without leave.

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.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find the Tenants breached the agreement by leaving early, and although the liquidated damages clause is not enforceable, I accept that some costs would have been incurred by the Landlord to re-rent the unit. I award a nominal amount to the Landlord for the Tenant's breach of the fixed term agreement. I award \$500.00 for this item.

5) \$150.00 – Move-out fee

I note the Tenant agreed to pay a move-out fee as part of his tenancy agreement. I accept that the Tenant did not pay this amount. As such, I award this item, in full.

6) \$1,850.00 – January rent

7) \$55.00 – Late Rent Fee and NSF fee

Although the Tenant had signalled to the Landlord that he was having financial troubles and may need to move, I note there is no evidence the Tenant gave any written notice to the Landlord until he signed the lease release forms on January 15, 2020, which was the same day he moved out. I note rent is due on the first of the month, but the Tenant never paid any rent for January, despite living there for 15 days. I find the Landlord took sufficient steps to mitigate the loss and successfully re-rented the unit for February 1, 2020, at the same rate. I find the Tenant is liable for January rent, in full, due to the Tenant's improper Notice. The Tenant ended his tenancy prior to being able to, legally, due to his fixed term lease. The Tenant also gave very short notice, which put the Landlord in a difficult position to re-rent the unit. Despite all of this, the unit was re-rented quickly. I find the Tenant is responsible for January rent, in full. I also find the Tenant is responsible for the late rent fee and the NSF fee, as his rent payment on January 1, 2020, bounced, and fees were incurred.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security and pet deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
General Cleaning	\$119.70
Carpet Cleaning	\$105.00
Nominal award	\$500.00
Move-out fee	\$150.00
January rent	\$1,850.00
NSF and Late fee	\$55.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,879.70

LESS: Security and Pet Deposit	\$1,850.00
Total Amount	\$1,029.70

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,029.70**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: June 15, 2020

Residential Tenancy Branch