



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on September 2, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act; and,
- 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 attended the hearing. However, the Tenant did not attend the hearing. The Landlord provided registered mail tracking information showing he mailed (to the Tenant's forwarding address provided at the end of the tenancy) the Notice of Hearing and evidence to the Tenant on April 12, 2021. Pursuant to section 89 and 90 of the Act, the Tenant is deemed served with this package 5 days after it was mailed.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or loss under the Act?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The Landlord stated that the Tenants signed a fixed term tenancy agreement starting on August 1, 2020, ending on July 31, 2021. The Landlord stated that monthly rent is \$1,250.00 and is due on the first of the month. The Landlord holds a security deposit of \$625.00 and a pet deposit of \$625.00.

The Landlord stated that the Tenant gave written Notice, on March 16, 2021, that he would be moving out on March 31, 2021. The Landlord stated that this was only 15 days notice, which did not allow them enough time to re-rent the unit for April 1, 2021. As such, the Landlord is seeking April 2021 rent, of \$1,250.00, as the unit sat empty for this period of time while new tenants were sought. The Landlord explained that they reposted the ad for unit a day after Notice was given, and after a few days of limited interest, they lowered the price, and reposted the ad again. Subsequently, the Landlord stated that they were able to re-rent the unit as of May 1, 2021, at a rate of \$1,175.00.

The Landlord is also seeking liquated damages in the amount of \$500.00. The Landlord provided a copy of the tenancy agreement, signed by the tenant, which shows that he agreed to pay a liquidated damages sum of \$500.00 in the event the fixed term was breached. The Landlord stated that this barely covers the cost of re-renting the unit and for property management fees.

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 Landlords 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.

Item #1 - \$500.00 – Liquidated Damages

I note that Residential Tenancy Policy Guideline 4 provides for 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. If a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum unless the sum is found to be a penalty. I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty as it is less than half month's rent. It was an amount that was agreed upon at the start of the tenancy. Therefore, I grant the Landlord's request to recover liquidated damages of \$500.00 from the Tenant.

Item #2 - \$1,250.00 in lost rent for April 2021.

I note the following relevant portions of the *Policy Guideline #5 – Duty to Minimize Loss*:

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

The Landlord is seeking to recover lost rent for April 2021, the period of time that the unit was vacant. I find the Tenant breached the fixed term tenancy agreement, by giving Notice prior to the end of his fixed term tenancy, which ran until July 31, 2021. I note the Tenant only gave 2 weeks notice before vacating, and it would have been challenging to find tenants for April 1, 2021. Regardless, the Landlord reposted the ad right away, and even lowered the price, which eventually led to a successful re-rental starting in May. I find the Landlord sufficiently mitigated loss in this regard, and the Tenant's breach of the tenancy agreement, and the Act, leaves him responsible for the rental loss, in the amount of \$1,250.00. I award this item in full.

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 Tenants 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
Liquidated Damages	\$500.00
Lost Rent	\$1,250.00

PLUS: Filing Fee	\$100.00
Subtotal:	\$1,850.00
LESS: Security and Pet Deposit	\$1,250.00
Total Amount	\$600.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$600.00**, 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: September 02, 2021

Residential Tenancy Branch