



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for loss of rent revenue - Section 67;
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenants were each served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenants did not participate in the conference call hearing.

The Landlord was given full opportunity 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 tenancy began on April 1, 2010 and ended on January 31, 2011. The tenancy agreement was for the period ending March 31, 2011. Rent in the amount of \$850.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$425.00 and conducted a move-in inspection. At the end of the tenancy, the Landlord set a date for the move-out inspection however the Tenants were unable to attend due to a family

emergency. The Landlord could not provide evidence that a second inspection time was offered to the Tenants. The Landlord states that at the end of the tenancy, cleaning was required to the unit and bills were submitted for carpet cleaning in the amount of \$95.20 and other suite cleaning in the amount of \$240.00. The Landlord states that the unit was re-rented and the new tenant took possession on February 19, 2011. The Landlord claims lost rental income and a charge for re-renting the unit. The re-rent charge is contained in the lease agreement and states "If the tenant terminates the agreement before the end of the original term, the Landlord may, at the Landlord's option, treat his Tenancy Agreement as being at an end. In such event, the sum of \$300.00 shall be paid by the Tenant to the Landlord as liquidated damages . . .".

Analysis

Sections 35 and 36 of the Act operate to extinguish the landlord's right to claim against a security deposit for damage to residential property if the landlord fails to offer the tenant at least two opportunities for a move-out inspection. As the Landlord failed to offer the Tenant a second opportunity to complete a move-out inspection, I find that the Landlord's right to make a claim for cleaning costs has been extinguished and therefore dismiss this part of the Landlord's application.

The tenants signed a lease with a term ending March 31, 2011 but moved out on January 31, 2010. The Landlord claimed lost rental income as a result of the early end of the tenancy and also claimed an amount for liquidated damages. The Landlord has chosen to make a claim for lost rental income as opposed to accepting the end of the tenancy on January 31, 2011 and as the liquidated damages clause only operates when the Landlord accepts an end of the tenancy, I dismiss the Landlord's claim for liquidated damages. As the Landlord was able to re-rent the unit with a possession date of February 19, 2011, I find that the Landlord has established a claim for lost rental income for the period February 1 to February 18, 2011. Based on the Landlord's claim of a per diem amount of \$25.37, I find the Landlord to be eligible for a monetary award in the amount of \$456.66 (25.37×18 days) for loss of rent revenue. The Landlord is also

entitled to recovery of the \$50 filing fee, for a total entitlement of **\$506.66**. The **security deposit** will be off-set from the award made herein.

Calculation for Monetary Order

Loss of rent revenue	\$456.66
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-425.00
Total Monetary Award	\$81.66

Conclusion

I Order that the Landlord retain the **deposit** and interest of \$425.00.00 in partial satisfaction of the claim and I grant the Landlord an Order under Section 67 of the Act for the balance due of **\$81.66**. 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: April 15, 2011.

Residential Tenancy Branch