



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, 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 attend this hearing, although I waited until 3:10 p.m. in order to enable the tenant to connect with this hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered into written evidence a copy of the tenant's February 17, 2012 written notice to end this tenancy by March 31, 2012. The landlord testified that on April 5, 2012 he sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail to the forwarding address provided by the tenant. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

At the commencement of the hearing, the landlord reduced the amount of his requested monetary award from \$1,875.00 to \$1,300.00. This reduced request reflected the landlord's success in locating a new tenant who took occupancy of the rental unit on April 15, 2012 for the same rent as that paid by the tenant in his tenancy.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on June 1, 2011. Monthly rent was set at \$1,250.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$625.00 security deposit paid on May 9, 2011.

The landlord's revised application for a monetary award of \$1,300.00 included the following items:

Item	Amount
Loss of Rent for first half of April 2012	\$625.00
Liquidated Damages as per Tenancy Agreement and Security Deposit Statement	625.00
Recovery of Filing Fee for this application	50.00
Total Revised Monetary Award Requested	\$1,300.00

The landlord's claim for loss of rent for the first half of April 2012 resulted from the landlord's loss of rent for that portion of the remainder of the tenant's fixed term tenancy agreement. The landlord testified that he listed the availability of the rental unit on Craigslist, Kigigi and the landlord's own rental website. The landlord also said that the landlord explored with the tenant the possibility of the tenant identifying someone who might take over the remaining portion of the tenant's fixed term tenancy agreement.

The landlord claimed for \$625.00 in Liquidated Damages in accordance with section 5 of the residential tenancy agreement entered into by the tenant. In addition to submitting a copy of the residential tenancy agreement, the landlord entered into written evidence a copy of the tenant's signed Security Deposit Statement on the Joint Move-Out Condition Inspection Report of March 19, 2012. In this Statement, the tenant agreed that the landlord could deduct the unpaid rent for April 2012 and the \$625.00 Liquidated Damages payment from his security deposit, leaving him owing \$1,250.00 to the landlord at that time.

Analysis

Based on the undisputed oral and written evidence provided by the landlord, I find that the landlord is entitled to a monetary award of \$650.00 for the landlord's loss of rent for the first half of April 2012. In making this decision, I find that the landlord has discharged his responsibility under section 7(2) of the *Act* to mitigate the tenant's losses. As the landlord was able to rent the premises to another tenant for the same rent as that paid by the tenant as of April 15, 2012 for the remainder of the tenant's fixed

term tenancy, the landlord is not eligible to receive recovery of any other losses for rent stemming from this tenancy.

Since the tenant has provided his written authorization to the landlord in the Security Deposit Statement to retain \$650.00 for Liquidated Damages, I find that the landlord is eligible to a monetary award of \$650.00 for Liquidated Damages.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I find that the landlord is entitled to recover his \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover losses arising from this tenancy and the filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Loss of Rent for first half of April 2012	\$625.00
Liquidated Damages as per Tenancy Agreement and Security Deposit Statement	625.00
Less Security Deposit	-625.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$675.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 27, 2012

Residential Tenancy Branch