

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This is an application for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security and pet damage deposits and recovery of the filing fee.

The Landlord attended the hearing by conference call and gave undisputed testimony. The Tenant did not attend. The Landlord states that the Tenant was served with the notice of hearing and evidence package by Canada Post Registered Mail on August 31, 2012 and has submitted the Customer Receipt Tracking No. as confirmation. The Tenant did not submit any documentary evidence. I am satisfied based upon the undisputed testimony that the Tenant was properly served with the notice of hearing and evidence package on August 31, 2012.

The Landlord withdraws the monetary request for the loss of rental income as the Tenant vacated the rental unit on July 31, 2012 and the unit was re-rented on August 1, 2012. As such this portion of the application requires no further action.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security and pet damage deposits?

Background, Evidence and Analysis

This Tenancy began on March 1, 2012 on a fixed term tenancy ending on February 28, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$900.00 payable on the 1st of each month and a security deposit of \$50.00 and a \$200.00 pet damage deposit were paid. The Landlord states that the Tenant made a voluntary \$475.00 payment to end the Tenancy on July 31, 2012.

The Landlord seeks a monetary claim for \$350.00 for breaking the lease and \$375.00 for the recovery of the concession incentive given at the beginning of the tenancy. The Tenancy ended pre-maturely on July 31, 2012 before the end of the fixed term tenancy. The Landlord also seeks the recovery of \$375.00 for a "Rental Incentive Agreement" signed by the Tenant allowing for a reduction of \$75.00 per month for the 5 months the Tenant was in possession of the rental unit. The Agreement states that the Tenant end

the Tenancy before the end of the term the Tenant will pay the Landlord the monthly concession amount.

Residential Tenancy Policy Guideline #4 speaks to liquidated damages. It states,

“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 tenancy agreement. 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.”

Further the Guideline states,

“ If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.”

Having review Policy Guideline #4, I find that the Landlord has established that the Tenant breached the lease agreement by ending it pre-maturely. The Landlord is entitled to recovery of the \$350.00 claim.

The “Rental Incentive Agreement” is also clear as the Tenant has pre-maturely ended the Tenancy and is responsible for paying the agreed \$75.00 per month for the 5 months totalling, \$375.00.

The Landlord has established a total monetary claim of \$725.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. The Landlord currently holds \$725.00 for a \$475.00 voluntary payment for ending the Tenancy and the \$250.00 combined pet and security deposits. I order that the Landlord may retain the \$725.00 to offset the established claim of \$775.00. The Landlord is granted a monetary order under section 67 for the balance due of \$50.00.

Conclusion

The Landlord is granted a monetary order for \$50.00.

The Landlord may retain the combined pet damage and security deposits.

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: November 05, 2012.

Residential Tenancy Branch