



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the security deposit. This matter was originally set for hearing by conference call on January 4, 2013. The landlord and the tenant called in at the appointed time, but the arbitrator did not attend. Both parties were contacted after the hearing and the application was re-scheduled for hearing by conference call on January 16, 2013. New hearing letters were sent to the landlord and to the tenant. The landlord's representative called into the hearing, but the tenant did not attend the rescheduled hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Victoria. The tenancy began on January 1, 2012 for a fixed term ending December 31, 2012. The original tenant was R.N. On July 27, 2012 a tenancy agreement was created naming the tenant, C.C. and R.N. as tenants. The landlord's representative testified that commencing August 1, 2012 the tenancy was assigned to the tenant C.C. and the former tenant, R.N. was released from her obligations under the tenancy agreement. The tenant continued as the sole tenant until he ended the tenancy and moved out in October, 2012. The landlord succeeded in re-renting the unit effective November 1st. The landlord's representative testified that the rent for October was paid late; according to the testimony of the landlord's representative at the hearing, it was paid by direct deposit and did not appear in the landlord's account until October 3, 2012. I was not provided with any documentary evidence to establish that the October rent was paid late.

The landlord has claimed the following amounts from the tenant:

- Unpaid utilities of \$13.40 billed to the landlord plus a \$25.00

administration fee for a total of	\$38.40
• October late payment fee:	\$25.00
• Carpet cleaning:	\$79.00
• Liquidated damages for breach of the fixed term lease	\$400.00
• Return of rental incentives in the sum of	\$1,284.50

With respect to the rental incentive claim the landlord said that: "Failure to pay rent in full on the first of the month throughout the term of the lease has resulted in forfeiture of the rental incentive as provided in the lease (Section 9: ADDITIONAL TERMS). The rental incentive consists of a \$690.00 credit as the amount of rent charged between move-in on December 14, 2011 and the commencement of the lease term on January 1, 2012, and a \$594.50 credit as half of the first month's rent."

Analysis and conclusion

The evidence presented by the landlord established that the rental agreement was assigned to the tenant effective August 1, 2012 and R.N., the former tenant was released from any obligations under the tenancy agreement. The landlord now alleges that the tenant should be responsible for repaying rental incentives that accrued to the benefit of the former tenant before the assignment was made. The landlord's evidence was that there were already breaches that would entitle the landlord to demand repayment of incentives when the assignment was made, but there is no evidence to suggest that the tenant as assignee was made aware that he would be expected to repay incentives given to the former tenant before he became tenant. It was open to the landlord to advise the former tenant that she was not released from her obligations under the tenancy agreement, but the landlord chose to not do so and I find that by releasing her from her obligations without demanding repayment of the incentives at the time of the assignment, they waived their right to now demand repayment of the incentive amounts. I therefore deny the claim for repayment of rental incentives.

Section 7 of the Residential Tenancy Regulation provides as follows:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;

(f) a move-in or move-out fee charged by a strata corporation to the landlord;

(g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The only non-refundable fees that may be charged are those enumerated in the Regulation; an administration fee for paying a utility bill is not an allowable fee and I allow the claim for the utility charge of \$13.40, but not the administration fee. With respect to the late fee for October rent I do not allow this charge in the absence of proof that the rent was actually paid late. The landlord is entitled to liquidated damages in the amount of \$400.00 for ending the tenancy before the end of the fixed term and the landlord is entitled to recover the carpet cleaning charge. The total amount awarded to the landlord is the sum of \$492.40. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$542.40. The landlord holds a security deposit of \$399.00 and a pet damage deposit of \$595.00.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The

arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of its monetary claim. Because the claim has allowed in an amount that is less than the deposits held by the landlord it is appropriate that I order the return of the balance of the tenant's security and pet deposits; the deposits total \$994.00. I order that the landlord retain the sum of \$542.40 and I grant the tenant a monetary order for the balance of \$451.60. This order may be registered 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: January 18, 2013

Residential Tenancy Branch

