



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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 unpaid rent - Section 67;
2. A Monetary Order for compensation– Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not appear at the 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?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 1, 2013 on a fixed term to May 31, 2015. Rent of \$950.00 was payable monthly on the first day of each month and at the outset of the tenancy the Landlord collected \$475.00 as a security deposit. The tenancy ended March 26, 2013 after the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent with an effective date of March 16, 2013. The Tenant did not

pay rent of for March 2013 but signed an agreement that the Landlord could retain the security deposit against monies owing to the Landlord. The Landlord claims unpaid rent of \$950.00. The tenancy agreement provides for a late fee of \$50.00 for each late rent payment and the Landlord acknowledges that the late fee should be only \$25.00. The Landlord claims \$25.00 for a late fee for March 2013.

The Landlord advertised the unit on craigslist on April 1, 2013 and obtained a new tenancy for June 1, 2013. The Landlord claims lost rental income for April and May 2013 plus late fees for each month.

The tenancy agreement provides for a "re-rental fee of \$500.00 as liquidated damages . . ." where the tenant vacates the unit before the end of the term and the Landlord claims \$500.00 pursuant to this clause.

The tenancy agreement provides that the tenant is responsible for all utilities and that the tenant must pay the appropriate authorities for them. The Landlord states that the Tenant entered into an oral agreement with the upper tenant to pay half the utility bills that are in the upper tenant's name. The Landlord states that the Tenant did not pay any utilities and the Landlord paid the upper tenant for these costs. The Landlord claims unpaid utilities of half the upper tenant's costs and provided the upper tenant's invoices for the period December 13 to March 18, 2013.

The Parties mutually conducted a move-in and move-out report and it is noted in the copies of these reports that no damages were noted to the unit. The Landlord states that the Tenant left several belongings in the unit and that the Landlord incurred costs to haul and store these items. The Landlord also claims costs for the replacement of locks as the Tenant did not return the keys. The Landlord did not provide any invoices for these claimed costs.

Analysis

Section 216 of the Act provides that rent is payable when it is due under the tenancy agreement. Based on the undisputed evidence of the Landlord I find that the Landlord has substantiated an entitlement to **\$950.00** in unpaid rent.

“Liquidated damages” is a term that recognizes a legal principle where, by agreement, one party accepts a sum of money in exchange for the other party ending a contract prior to its end date and no other monies are then payable pursuant to the contract. In order to give effect to the principle of liquidated damages, I find that the liquidated damages clause as set out in the tenancy agreement reflects the Landlord’s agreement that the sum of money to re-rent the unit will be accepted where either party terminates the agreement. To further give effect to the principle of liquidated damages, I find that this clause does not allow a landlord to pursue additional monies, such as lost rental income, for the breach of the fixed term tenancy but does allow the landlord to pursue other unrelated damages such as unpaid rents. I therefore find that the Landlord has substantiated an entitlement to **\$500.00** in liquidated damages and I dismiss the Landlord’s claim for lost rental income.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As the tenancy agreement does not provide for the Tenant to pay utilities to anyone other than the utility company and considering that the amounts claimed extend beyond the actual tenancy, I find that the Landlord has not established the costs claimed and I dismiss the Landlord’s claim for unpaid utilities.

As the Landlord did not provide invoices for the costs claimed in relation to removal and storage of the Tenant’s good or for the costs to replace the locks, I find that the Landlord has not established the costs claimed and I dismiss these claims.

Section 5 of the Act provides that Parties may not contract out of the Act or Regulations and any attempt to do so is of no effect. Section 7 of the Regulations provides that a landlord may charge a late rent fee not more than \$25.00 and that a landlord must not charge this fee unless provided for in the tenancy agreement. As the tenancy agreement provides for an amount that is greater than allowed under the Regulation, I find that the tenancy agreement in relation to the late fee is of no effect. As there is no effective late fee provided for in the tenancy agreement, I dismiss the Landlord's claims to late fees.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,500.00**. Setting the security deposit plus zero interest of **\$475.00** off the entitlement leaves **\$1,025.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit of \$475.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,025.00**. 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: July 22, 2013

Residential Tenancy Branch