



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AGB PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. The tenant did not appear at the hearing. The landlord testified that the tenant provided a forwarding address to the landlord on a post-it-note at the move-out inspection held on November 29, 2014. The landlord verified that it was the same address that appeared on the tenancy application she had completed. The landlord sent the hearing documents and evidence to the tenant at that address via registered mail on December 16, 2014. As proof of service, the landlord provided a copy of the tenancy application, the registered mail receipt, including tracking number, the tracking information from Canada Post, and a photograph of the registered mail envelope before it was sent and after it was returned as unclaimed.

Section 90 of the Act provides that a party is deemed to receive document five days after mailing even if the party does not accept or pick up their mail so that a party cannot avoid service.

Upon consideration of the undisputed evidence before me, I accept that the landlord sent the hearing documents to the tenant at the forwarding address she provided and I find the tenant is deemed to have received the hearing documents five days after mailing. Therefore, I proceeded to hear from the landlord without the tenant present.

I noted that the landlord's evidence package included a table of contents referring to specific documents and that some of the documents were not in the package before me. I requested the landlord (re)submit the missing documents, namely the cleaning invoice and the condition inspection report, for my review. The landlord provided the required documents as requested and I have considered them in making this decision.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The fixed term tenancy commenced on September 1, 2014 and was set to expire on August 31, 2015. The tenant paid a security deposit of \$395.00 and was required to pay rent of \$785.00 on the 1st day of every month. On October 31, 2014 the landlord issued a 1 Month notice to End Tenancy for Cause to the tenant with a stated effective date of November 30, 2014. The tenant vacated the rental unit on November 29, 2014 and the parties conducted a move-out inspection together on that date; however, the tenant would not sign the move-out inspection report.

Below, I have summarized the landlord's claims against the tenant, as amended during the hearing to reflect reduced amounts.

Cleaning - \$149.63

The landlord testified that the tenant performed very superficial cleaning efforts and that additional cleaning was required to several areas including: the bathroom, floors, stove, fridge, hood fan, walls, inside drawers, among other items. The landlord submitted a copy of a very detailed cleaning invoice in the amount of \$149.63 and the condition inspection report that indicates further cleaning was required in many areas of the rental unit.

Liquidated damages - \$500.00

The landlord pointed to clause 5 of the tenancy agreement in support of this claim. Clause 5 indicates that if the tenant breaches a material term of the tenancy agreement that causes the landlord to end the tenancy before the end of the fixed term, or if the tenant provides the landlord with notice, the tenant will pay to the landlord the sum of \$500.00 as liquidated damages for costs associated to re-rented the unit. The clause also provides that payment of liquidated damages does not preclude the landlord from claiming future rental revenue losses.

The landlord submitted evidence that the tenancy ended pursuant to a 1 Month Notice to End tenancy for Cause.

The landlord provided a written submission to demonstrate how the landlord determined the amount of \$500.00 represents a genuine estimate of the costs to re-rent the unit. The amount takes into account advertising costs, the time it typically takes to show a rental unit to prospective tenants and perform credit checks and reference checks, and, the cost to perform credit checks of prospective tenants.

Loss of rent – \$315.00

The landlord submitted that efforts to mitigate rental losses resulted in re-renting the unit for \$750.00 per month starting December 1, 2014. Therefore, the landlord submitted that its losses amount to \$35.00 per month for the nine months remaining in the fixed term or \$315.00 and the landlord seeks to recover this loss from the tenant.

The landlord provided a copy of the tenancy agreement entered into with the subsequent tenant on November 14, 2014. It shows that the subsequent tenant entered into a fixed term tenancy agreement to run from December 1, 2014 to August 31, 2015 with rent payable in the amount of \$750.00 per month.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Cleaning

The Act requires that a tenant leave a rental unit reasonably clean at the end of the tenancy. Based upon the landlord's undisputed evidence, including the landlord's testimony, move-out inspection report, and the cleaner's invoice, I accept that the tenant failed to leave the rental unit reasonably clean and I grant the landlord's request to recover \$149.63 from the tenant for cleaning.

Liquidated damages

Residential Tenancy Policy Guideline 4 provides policy statements with respect to claims for liquidated damages. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty.

In this case, the landlord presented evidence that the tenancy ended before the expiry of the fixed term due to 1 Month Notice to End Tenancy for Cause. As such, I find that it was the tenant's actions that caused the tenancy to end early. Upon consideration of the landlord's submissions with respect to how the amount of \$500.00 was determined I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$500.00 from the tenant.

Loss of rent

Where a tenant enters into a fixed term tenancy agreement and the tenancy ends before the expiry of the fixed term, the landlord may pursue the tenant for loss of rent suffered by the landlord during the remainder of the fixed term. The landlord bears a burden to take reasonable steps to mitigate its losses.

In this case, the rental unit was re-rented right after the subject tenancy ended but at a lesser rent. I accept that the landlord took reasonable steps to mitigate rental losses as evidenced by its loss of only \$315.00 (calculated as 9 months at \$35.00 per month) for the remainder of the fixed term. Therefore, I find the tenant obligated to compensate the landlord for the rental loss of \$315.00 for the remainder of the fixed term and I award the landlord that amount.

Filing fee, security deposit and Monetary Order

Since the landlord was successful in this Application, I further award the landlord recovery of the \$50.00 filing fee paid for this Application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision and I provide the landlord with a Monetary Order calculated as follows:

Cleaning	\$ 149.63
Liquidated damages	500.00
Loss of rent	315.00
Filing fee	50.00
Less: security deposit	<u>(395.00)</u>
Monetary Order	\$ 619.63

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$619.63 to serve and enforce as necessary.

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: August 05, 2015

Residential Tenancy Branch

