



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, O, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and 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 landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 17, 2016. The landlord has provided a copy of the Canada Post Customer Receipt Tracking number as confirmation and has provided undisputed affirmed testimony that the tenants received the package(s) on January 23, 2017. I accept the undisputed affirmed evidence of the landlord and find that the tenants were both properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, for money owed or compensation for damage or loss and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2016 for a fixed term tenancy ending on January 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated December 10, 2015. The monthly rent was \$1,422.00 payable on the 1st day of each month. A security deposit of 650.00 was paid.

The landlord clarified that the \$51.00 claim for a Late Fee and NSF Charge was a clerical error and should have been for \$50.00 (at \$25.00 each).

The landlord seeks a monetary claim of \$3,450.00 which consists of:

\$711.00	Liquidated Damages
\$422.00	Unpaid Rent, July 2016
\$1,422.00	Unpaid Rent, August 2016
\$194.00	Unpaid Rent, March 2012
\$50.00	Late Rent Fee and NSF Charge
\$425.00	Cleaning
\$225.00	Rubbish and Carpet Cleaning

Upon review of landlord's claim, I find that the landlord made a mathematical error and that the total claim should be \$3,449.00 based upon the above confirmed amounts provided by the landlord's agent.

The landlord provided undisputed affirmed evidence that upon vacating the rental unit at the end of July 2016 the landlord discovered that the tenants left the rental unit dirty and damaged which required cleaning and garbage removal.

The landlord in support of this claim has submitted:

- A copy of the signed tenancy agreement dated December 10, 2015
- A copy of the completed condition inspection report for the move-in dated January 14, 2012
- A copy of the incomplete condition inspection report for the move-out dated July 31, 2016 not signed by the tenants
- A copy of the cleaning invoice dated July 30+31, 2016 for \$425.00

A copy of 2 pages of email exchanges between the landlord and the tenants
A copy of 11 pages of the landlord's tenant ledger detailing all of the tenants history with the landlord regarding rent payments
A copy of an online advertisement advertising the rental unit for rent

The landlord stated that the tenants provided notice to end the tenancy at the end of July 2016 which was in breach of the signed fixed term tenancy. The landlord refers to section 3.1 regarding compensation through liquidated damages. The landlord also provided undisputed affirmed evidence that the \$711.00 of liquidated damages which is 50% of the monthly rent equals the landlord's administrative costs in advertising and re-renting of the rental unit because of the tenant's premature termination of the tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided sufficient evidence to satisfy me of the monetary claim of \$3,449.00. I find that the tenants failed to pay rent totalling, \$616.00. I also accept the landlord's evidence based upon the tenant ledger that a late fee of \$25.00 and an NSF charge of \$25.00 was caused by the tenant's neglect. I find that the tenants breached the fixed term tenancy by prematurely ending it on July 31, 2016 as opposed to the fixed term ending on January 31, 2017 and find that the landlord is entitled to recovery of liquidated damages of \$711.00 as a genuine pre-estimate of costs incurred for administrative and advertising costs suffered by the landlord due to the tenants neglect. I also find that the landlord was unable to re-rent the unit for the month of August 2016 even after the landlord made reasonable attempts to immediately re-rent the unit upon being given notice by the tenants. The landlord is entitled to recovery of loss of rental income for August 2016 of \$1,422.00. I also accept the landlord's undisputed affirmed evidence that the tenant's vacated the rental unit leaving it dirty which required cleaning, rubbish removal and carpet cleaning.

The landlord has established a total monetary claim of \$3,449.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$650.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$2,899.00.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial 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: February 15, 2017

Residential Tenancy Branch