



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, MNDC, O, FF

Introduction

This hearing dealt with an application by the tenants for an order that the landlord return their security deposit and a cross application by the landlord for a monetary order and an order to retain part of the security deposit in satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to a claim for liquidated damages?

Background and Evidence

The parties agreed that the tenancy began on September 15, 2007 and was set to run for a fixed term ending on September 30, 2008. At the outset of the tenancy the landlord collected from the tenants a security deposit in the amount of \$600.00. The tenancy agreement contains a liquidated damages provision providing that if the tenant ends the tenancy before the end of the term the landlord was entitled to recover \$1,200.00 in liquidated damages. The tenants gave notice on July 15, 2008 that they would be ending the tenancy on September 1, 2008. The parties agreed that the tenants connected the landlord with the tenants who moved into the rental unit after the tenancy was over. The landlord provided copies of the property management agreement which stipulates that the owners were required to pay the property management company \$450.00 for re-renting the rental unit.

The landlord testified that because the tenants ended the fixed term one month early, he is seeking to recover for the landlord only \$420.00, which is what the property management company is charging the landlord as the cost of re-renting the property. The landlord emphasized that he was not charging the tenants for the cost of doing credit checks on the new tenants. The tenants testified that because they helped find

new tenants and because they ended the tenancy just one month before the end of the fixed term, they should not be responsible for the property management charge for re-renting the unit.

Analysis

In order to successfully establish a claim for liquidated damages, the landlord must prove that the damages claimed are a genuine pre-estimate of the cost of re-renting the rental unit. I find that the landlord has proven that the \$420.00 amount claimed represents the actual cost to the owner of re-renting the unit. There is no provision under the law which permits tenants to escape a liquidated damages provision if the fixed term is ended very close to the end of the term. The tenants had the option of remaining in the fixed term until the end of the tenancy or asking the landlord for permission to assign their tenancy for the month of September. I find that the landlord is entitled to retain \$420.00 in liquidated damages from the security deposit.

Conclusion

The tenants' claim is dismissed. The landlord currently holds a security deposit and interest of \$610.77. I order that the landlord deduct \$420.00 from the deposit and return the \$190.77 balance to the tenants forthwith. I grant the landlord an order under section 67 for \$190.77. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 29, 2008.