



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD

Introduction

This hearing dealt with an application by the landlord to retain the security deposit. Both the agent for the landlord and the tenant attended and gave affirmed testimony in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit as claimed?

Background and Evidence

The tenancy began on April 1, 2008 as a one year fixed term lease, with monthly rent in the amount of \$1600. On March 15, 2008 the tenant paid a security deposit of \$800. The tenancy agreement contains a clause that allows for liquidated damages of \$300 plus GST, in the event that the tenant terminates the tenancy before the expiry of the lease. On September 4, 2008 the tenant gave the landlord notice that she would be moving out on October 4, 2008. The tenant paid rent for the full month of October 2008, and moved out on October 4, 2008. At the time of the move-out inspection, the tenant agreed that the landlord could retain \$315 from the security deposit for the liquidated damages amount including applicable GST. The tenant expected the landlord to reimburse her the remaining \$485 from her security deposit.

The evidence of the landlord is that he began advertising immediately on the internet and in newspapers to re-rent but has been unsuccessful as of the hearing date in securing a new tenant. The landlord seeks to retain the entire security deposit, with

\$315 applicable toward the liquidated damages amount plus GST, and the remainder as compensation for loss of revenue for November 2008. The landlord did not provide a copy of the tenancy agreement or any other documentary evidence to support the application.

Analysis

I find that the landlord has provided insufficient evidence to support the claim. I cannot determine whether the liquidated damages clause in the tenancy agreement is valid, and if so, whether the landlord would therefore be entitled to make a further claim for loss of revenue.

Conclusion

I dismiss the landlord's application in its entirety. The landlord is not entitled to retain any portion of the tenant's security deposit or applicable interest.

Dated: November 26, 2008.