



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied for recovery of the security deposit and monetary compensation for damage or loss under the Act, regulation or tenancy agreement. The landlord applied for a monetary order and an order to retain the security deposit in partial compensation of their claim. The tenant, the landlord's agent and a witness for the landlord all participated in the teleconference hearing.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy commenced on September 6, 2008 as a fixed term tenancy to end on August 31, 2009. The monthly rent, due in advance on the first day of each month, was \$1275. On August 23, 2008 the landlord received from the tenant a security deposit in the amount of \$637.50. The tenancy agreement includes a liquidated damages clause which states that if the tenant ends the tenancy before the end of the fixed term, the tenant must pay to the landlord a sum of \$500 to cover the administration costs of re-renting the rental unit. The tenant signed the tenancy agreement on September 20, 2008.

On February 14, 2009 the tenant gave the landlord written notice of his intention to vacate the rental unit by March 15, 2009. The building manager and the tenant

conducted a joint move-out inspection on March 15, 2009, and the tenant provided his written forwarding address on that date. On April 5, 2009 the tenant received from the landlord a cheque in the amount of \$141.45, representing return of the security deposit and interest, less \$500 for liquidated damages. The landlord re-rented the unit commencing March 15, 2009 for a reduced rent of \$1200 per month.

The evidence of the tenant on his application was as follows. The tenant moved into the rental unit on September 14, 2008 but he did not sign the tenancy agreement until September 20, 2008. The tenant was concerned about the liquidated damages clause, and the building manager at that time assured the tenant that they never claimed the liquidated damages amount. The tenant submitted as supporting evidence an unsigned statement of the former building manager, who acknowledged that he told the tenant he had never seen the liquidated damages amount collected in the time that he was a manager.

The tenant stated that his relationship with the owner of the building had gone sour, and it was because of the bad living situation that the tenant had no option but to move out. The tenant believes that the landlord is only trying to collect the liquidated damages because the owner personally dislikes him. After the tenant gave his notice to vacate, the current building manager told the tenant not to worry about the liquidated damages. The tenant submitted that the landlord ought not to be entitled to the liquidated damages amount, on the basis of promissory estoppel. The tenant has claimed double recovery of the security deposit; \$50 for his long distance telephone calls, printing and postage fees; return of the liquidated damages withheld; and aggravated damages of \$1500.

The landlord's evidence was as follows. In regard to the tenant's claim, the landlord stated that it is their standard procedure to claim the liquidated damages amount when a tenant breaks a lease, to cover the administrative costs of re-renting. The landlord does not know what the former building manager told the tenant, but the owner's policy is to always claim the liquidated damages in the event that a tenant breaks their lease. The landlord provided as supporting evidence copies of records where liquidated

damages were claimed against other tenants. The landlord submitted that the tenant is a lawyer or has a legal background and the landlord assumed that the tenant understood and accepted the terms of the lease, including the liquidated damages clause, when he signed it. The landlord acknowledged that she made the wrong decision when she did not apply for an order to retain the liquidated damages clause, but she was fearful of the tenant. The landlord's understanding was that the tenant moved out because he was moving to Yellowknife for work. The landlord claimed the liquidated damages amount of \$500.

In regard to the remainder of their claim, the landlord's evidence was as follows. The landlord had to reduce the rent for the unit because there was a drop in the market and prices have depreciated. The landlord has claimed \$412 for the difference in rent to the end of August 2009. The landlord also claimed \$3000 in aggravated damages against the tenant for incidents in which the tenant lost his temper and made the owner fearful for her personal safety.

The tenant's response to the landlord's application was that the rental unit was in a very desirable location near Kit's Beach, and the landlord should not have had to lower the rent. The tenant was concerned that the owner may have chosen to lower the rent so she could withhold the tenant's security deposit. The owner has exaggerated the events in which she stated that the tenant made her fearful for her personal safety, and she should not be entitled to aggravated damages when she was the one being petty and unreasonable.

Analysis

In regard to the tenant's claim for double recovery of the security deposit, I find that the landlord was not entitled to retain \$500 of the security deposit without either the tenant's written consent or an order that the landlord may retain that amount. The landlord did not make their application to retain any portion of the security deposit within the required time frame, and therefore the tenant is entitled to double recovery of the \$500 withheld, for a total of \$1000.

In regard to the liquidated damages clause, I find that the tenant, who did not deny being a lawyer or having a legal background, chose to sign the tenancy agreement when he was fully aware of the liquidated damages clause in the agreement. I do not find the former building manager, as the landlord's agent, gave the tenant a clear and unambiguous promise that the liquidated damages clause would not be enforced. I further do not find that the current building manager's actions amounted to any such promise that would amount to estoppel. I find that the tenant did break the lease, that the liquidated damages clause was a genuine pre-estimate of the potential administrative costs of re-renting, and that the landlord is entitled to the liquidated damages amount of \$500.

In regard to the loss of revenue claim, I accept the evidence of the landlord that they were forced to reduce the rent because of a drop in the market. I do not accept the tenant's supposition that the landlord purposely re-rented for less simply because she did not like the tenant and wanted to withhold his security deposit. I find that the landlord is entitled to the \$412 claimed for lost revenue from March 15 to August 31, 2009.

I do not accept either party's claim for aggravated damages. It is clear that the relationship between the tenant and the owner had gone sour, but I do not find that either party has demonstrated that the other has caused them to suffer mental distress or other non-pecuniary loss such that they are entitled to monetary compensation. I therefore dismiss the aggravated damages claims in both the tenant's and the landlord's applications.

The tenant has claimed \$50 for costs related to pursuing his application for dispute resolution. The only cost related to the dispute resolution process which I may award is the filing fee for the cost of the application. I therefore dismiss this portion of the tenant's application. In regard to the filing fees, I find that as both parties were only partially successful in their applications, neither is entitled to recovery of their filing fee.

Conclusion

The total amount to which the tenant is entitled is \$1000. The total to which the landlord is entitled is \$912. I therefore grant the tenant a monetary order for the balance of \$88. This order may be filed in the Small Claims Court and enforced as an order of that Court.