

Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the hearing and had opportunity to be heard.

Issue(s) to be Decided

When invoked does the liquidated damages provision in the tenancy agreement permit the landlord to pursue loss of income for the balance of the term of the lease?

Background and Evidence

The following facts are not in dispute: The tenancy began on October 1, 2008 and was set for a fixed term of one year, to end on September 30, 2009. The landlord and tenant are both corporations, although the tenancy is a residential tenancy. The rental rate was set at \$2,850.00 per month. The tenant paid a \$1,425.00 security deposit on September 25, 2008. On or about March 30, 2009 the tenant gave the landlord notice that it would be vacating the rental unit on April 30, 2009. With the notice, the tenant submitted payment of April's rent as well as \$2,850.00 in liquidated damages. The tenancy agreement provides as follows:

LIQUIDATED DAMAGES: If the tenant ends the fixed term tenancy before the end of the original term as set out in (B) above, the landlord may treat this Agreement as being at an end. In such event, the sum of \$2,850.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages covers [sic] the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The landlord testified that the unit was re-rented for July – September 2009 for \$455.00 per month less than what the tenant had been paying. The landlord accepts the

liquidated damages in compensation for loss of income for May and seeks recovery of lost income for June and the difference in rent for July – August inclusive between what the tenant was paying and what the current tenants are paying.

Analysis

In order to succeed in its application, the landlord must prove that the tenant had a continuing obligation to pay rent for the balance of the term of the lease. After having examined the liquidated damages provision, I find that upon accepting the liquidated damages payment from the tenant, the landlord elected to treat the tenancy agreement as being at an end. Because the agreement was at an end, the landlord no longer had the right to pursue the tenant for future loss of income. The last sentence of the provision enables the landlord to pursue the tenant for unpaid rent, but if the agreement was at an end, no rent would be payable in the future. I find that the only logical interpretation of this sentence is that the landlord could pursue the tenant for unpaid rent up until the point the agreement had ended, which in this case was April 30, 2009. The parties have agreed that no rent was owed as of April 30, 2009. I therefore find that the wording of the liquidated damages provision permitted the tenants to end the agreement by the payment of liquidated damages. By accepting the payment of liquidated damages, the landlord chose to treat the agreement as being at an end. I find the tenancy agreement ended on April 30, 2009 and that the tenant has no further liability with respect to rent beyond that date. The application is dismissed.

The landlord currently holds a \$1,425.00 security deposit, upon which \$5.72 in interest is payable. Residential Tenancy Policy Guideline 17 provides that when a landlord has applied to retain a security deposit and any part of the deposit is not awarded to the landlord, the deposit or balance of the deposit, as applicable, will be ordered to be returned to the tenant regardless of whether the tenant has applied for dispute resolution for its return. Accordingly I order the landlord to return to the tenant the \$1,430.72 security deposit. The tenant is granted a monetary order under section 67 for this sum which may be filed at the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order for \$1,430.72 which represents the security deposit and interest.

Dated August 11, 2009.
