



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2009 and was set to continue for a fixed term ending on January 31, 2010. On or about May 4 the tenants gave written notice to the landlord that they would be breaking the lease and vacating the rental unit on July 31, 2009. The landlord testified that in June he began advertising the unit by posting it on the landlord's corporate website as well as on Craigslist. The landlord testified that the rental unit was not re-rented until September 25 and seeks loss of income for the period of time in which the unit was vacant. The landlord also seeks to recover a \$200.00 move-in fee for the new tenants. The fee is imposed by the strata and the landlord argued that had the tenants honoured the fixed term, the fee would not have been payable.

The parties agreed that the tenancy agreement contained a liquidated damages provision which provided that the tenants would pay \$350.00 if they ended the tenancy prior to the end of the fixed term. The parties further agreed that the liquidated damages were deducted from the tenants' security deposit. The landlord testified that

he submitted a copy of the tenancy agreement to the Residential Tenancy Branch with his application, but the agreement was not placed in the file. I advised the landlord that his evidence had not been received and the landlord agreed to fax to the Branch a copy of the page of the tenancy agreement on which the liquidated damages provision could be found. As of the date of this decision, the landlord had not yet faxed the evidence and as a result this decision was made without the benefit of that evidence. At the hearing the landlord read aloud the provision which stipulates in part that if the tenants vacated the unit prior to the end of the fixed term the sum would be payable for "all costs incurred." The provision went on to indicate that liquidated damages were charges such as rent loss.

Analysis

Although the landlord did not submit the tenancy agreement to enable me to scrutinize the liquidated damages provision, having heard him read it aloud during the hearing, I am confident that I understand the provision and can correctly interpret it. Liquidated damages are designed to be a genuine pre-estimate of damages which will compensate an injured party in the event of a specific breach. In this case, the breach anticipated by the clause was exactly what occurred, the tenants ending the tenancy prior to the end of the fixed term. The clause specifically identifies rent loss as one of the losses the liquidated damages are designed to address. Noticeably absent from the clause is a statement that the landlord is not limited to the amount of the liquidated damages and is free to pursue the tenants for further loss should the liquidated damages not cover all the losses flowing from the breach. In the absence of such a statement, I find that the liquidated damages provision operates to limit the amount the landlord may recover from the tenants and accordingly I find that the landlord's claim for loss of income and the additional move-in fee must fail.

Conclusion

The landlord's claim is dismissed.

Dated: January 29, 2010
