



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. An order of possession for breach;
2. An order to be allowed to retain the security deposit;
3. A monetary or for compensation for loss; and
4. A monetary order to recover the security deposit.

Issues(s) to be Decided

Whether the landlord should be awarded the above-listed orders.

Background and Evidence

The landlord testified that the tenant entered into a fixed term tenancy agreement ending April 30, 2010. Rent was fixed at \$1,100.00 per month and the tenant paid a \$550.00 security deposit on March 30, 2009. On November 19, 2009 the landlord says the tenant gave written notice that he intended to vacate on December 31, 2009 and the tenant did vacate on that date. On the condition inspection report the tenant agreed to certain deductions from the security deposit including at \$350.00 deduction for "liquidated damages".

The landlord initially claimed rent for the months of January, February, March and April 2010. However the landlord testified that she was able to re-rent the premises effective

March 1, 2010 although at a rental rate reduced by \$40.00. The landlord says she now claims rent of \$1,100.00 for January 2010, \$1,100.00 for February 2010 and \$40.00 for each of those months as she had to reduce the rent. Total loss of rent claimed is \$2,280.00 plus the filing fee.

The tenant disagrees with the landlord's claims. The tenant pointed out a clause in the tenancy agreement on page 1 which says:

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 \$350.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages covers 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 tenant submits that the clause says the landlord "may" treat the tenancy agreement at an end in which case the tenant will pay \$350.00 as liquidated damages. The tenant submits that as the landlord accepted the payment of the sum of \$350.00 which was paid, as agreed, from the tenant's security deposit then the landlord has opted to treat the agreement as at an end.

Analysis

I agree with the submissions of the tenant. Based on the tenancy agreement entered into evidence before me I find that it says that when a tenant wishes to end the tenancy before the end of the fixed term the landlord has two options. The landlord may choose to accept \$350.00 from the tenant for liquidated damages in which case the tenancy agreement ends, or the landlord may opt not to accept that sum thereby continuing the agreement between the parties.

In this case, the landlord chose to accept the sum of \$350.00 and the agreement between the parties ended on the date that sum was accepted. As there was no longer an agreement between the parties, no more rent is payable by the tenant.

Conclusion

The landlord's application for loss of rental income and recovery of the filing fee is dismissed.

As this tenancy ended on December 31, 2009 the landlord's application for an Order of Possession is also dismissed as it is not required.