



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, liquidated damages and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The landlord served the notice of hearing to the tenant by registered mail to the forwarding address provided by the tenant. The landlord filed a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on March 01, 2010 for a fixed term of one year. The rent was \$1,150.00 payable on the first of each month. The tenant paid a security deposit of \$625.00.

On March 31, 2010, the tenant moved out. A move out inspection was conducted and the tenant agreed to allow the landlord to retain the security deposit towards the amount she owed for breaking the lease. The tenant also provided her forwarding address on the day she moved out.

The landlord was successful in re-renting the unit on April 16, 2010 and is therefore claiming prorated loss of income for the month of April in the amount of \$400. The landlord is also claiming \$625.00 as liquidated damages and \$50.00 for the filing fee and has applied to retain the security deposit in satisfaction of his claim.

Analysis

The landlord filed a copy of the tenancy agreement. The tenancy agreement contains a clause regarding liquidated damages that states:

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 \$625.00 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.

I find the provision to be poorly worded and unclear. While it clearly states that if the tenant wishes to end the tenancy early, she could pay liquidated damages in which case the landlord had the option of treating the tenancy as being at an end, the second sentence begins "In such event" which could mean "in the event the tenant ends the fixed term early" or "in the event the landlord elects to treat the agreement as being at an end" or both. In this case, the landlord expressly stated that he wished to hold the tenant to the strict terms of the contract.

However, given the unclear wording of the liquidated damages provision, I find that the provision can easily be construed to mean that upon payment and acceptance of liquidated damages, the agreement is at an end. While this is not the manner in which the landlord wishes to interpret the contract, I find that the rule of *contra proferentum* applies. This is a rule of contractual interpretation which provides that an ambiguous term in a contract is construed against the party that imposed the term, which in this case is the landlord.

I therefore interpret the liquidated damages provision to mean that upon payment and acceptance of liquidated damages, the landlord elected to treat the tenancy agreement as being at an end. Because the landlord accepted the end of the tenancy as of March 31, 2010, I find that the tenant cannot be held responsible for loss of income beyond the end of the tenancy and accordingly I dismiss the landlord's claim for loss of income for April.

The landlord has established a claim for \$625.00 which is the liquidated damages. The tenant had agreed to allow the landlord to retain her security deposit against this claim. Since the landlord's claim for loss of income is dismissed, the landlord must also bear the cost of the filing fee.

Conclusion

The landlord has retained the security deposit as agreed to by the tenant. The balance of the landlord's application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 30, 2010.

Dispute Resolution Officer