



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MNDC, MNSD, MNR, MND, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$1575.00, and a request that the landlord be allowed to retain the full security/pet/key fob deposit, totalling \$840.00 towards this claim.

Background and Evidence

The applicant testified that:

- The tenant signed a fixed term tenancy agreement with an expiry date of December 31, 2010.
- The tenant gave notice on March 26, 2010 and vacated on April 30, 2010.
- The tenant ended the tenancy well before the end of the fixed term and therefore she is liable for the \$300.00 liquidated damages as outlined in the tenancy agreement.

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- They were also unable to re-rent the unit for the month of May 2010, and therefore they are also asking for lost rental revenue in the amount of \$1200.00.
- They are dropping the claim for drape cleaning.

The applicants are therefore requesting an order as follows:

liquidated damages	\$300.00
Filing fee	\$50.00
Total	\$1550.00

The applicants request therefore that they be allowed to retain the full security/pet/key fob deposit of \$840.00 towards the claim, and that an order be issued for the remaining \$710.00.

The respondent testified that:

- Although she had originally disputed it, she now she does not dispute the liquidated damages claim, as she did sign the agreement with the \$300.00 liquidated damages clause.
- She does dispute the claim for May 2010 rent however because she was told that she could end the tenancy prior to the expiry of the lease as long as she gave one month clear notice and paid the \$300.00 liquidated damages.
- She was never told, nor is there anything in the tenancy agreement that states, that she would also be liable for any lost rental revenue.

The respondent therefore believes that she is only liable for the liquidated damages and that the remainder of her security deposits should be returned.

Analysis

The parties signed a tenancy agreement which has liquidated damages clause that states:

“To terminate this lease prior to the expiry date on the 31 day of December, 2010, the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition **the tenant is required to pay \$300.00 as liquidated damages to cover administration costs -- this is not a penalty.**”

Liquidated damages clauses are in place for the security of both parties. It gives the tenants the security of knowing that their liability is limited should they breach the tenancy agreement, and it gives the landlord the security of knowing that the tenant cannot breach the tenancy agreement without paying the amount agreed to in liquidated damages.

In this case the liquidated damages amount has been set at \$300.00, and that is all that the tenant is liable for. There is nothing in the liquidated damages clause that states that the tenants will have to pay the \$300.00 and any lost revenue, it just states the tenant must give notice and pay the \$300.00.

The tenant's liability is therefore limited to \$300.00.

I therefore allow the landlords claim for the \$300.00 liquidated damages and for the \$50.00 filing fee.

I will not allow the claim for the lost rental revenue for the month of May 2010

Conclusion



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I have allowed \$350.00 of the landlords claim and therefore the landlord may retain \$350.00 of the \$840.00 security/pet/key fob deposit.

I have issued an order for the landlords to return the balance of \$490.00 to the tenant

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: September 23, 2010.

Dispute Resolution Officer