



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for an Order for damage to the unit, an Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an Order to keep all or part of the pet damage deposit or security deposit and to recover the filing fee for the Application.

The Tenant applied for an Order for Return of all or part of security deposit and to recover the filing fee for the Application.

An agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

An agent for the Tenant appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issues(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Has the Tenant complied with the Act or tenancy agreement, entitling the Tenant to an Order for monetary relief?

Background and Evidence

This fixed term tenancy started in September 2009, and was to expire in September 2010. A security deposit in the amount of \$475.00 was paid on September 16, 2009. Although not provided into evidence at the time of the hearing, the Agent to the Landlord gave affirmed testimony that the Tenant signed a Tenancy Agreement accepting liquidated damages if tenancy ended early. The Landlord also supplied photos of damage to and of the unclean state of the rental unit and an invoice to the Tenant for cleaning, damage repair, over holding the suite and liquidated damages for

the breach of the lease. The photos also verified a posting on the Tenant's door of 2 written opportunities to perform a move out inspection.

The Agent for the Landlord gave affirmed testimony that the rental unit had to be advertised on an expedited basis and the Landlord did have a tenant for the month following the early tenancy end by the Tenant. The Agent for the Landlord also testified that the Tenant had not provided her forwarding address in writing to the Landlord until the Landlord received the Tenant's Application.

The Tenant supplied documentary evidence, including a faxed letter to the Landlord dated March 22, 2010, and a Notice from the Landlord regarding giving improper notice of a fixed term tenancy. The Tenant's Application stated the Landlord suffered no loss of income, but offered no proof of this at the hearing. The Agent for the Tenant also stated that the Tenant was not allowed back in the rental unit to clean after her tenancy ended. The Agent testified that he was informed by the Tenant that she had given the Landlord the forwarding address before leaving the rental unit.

Subsequent to the hearing, evidence was received which had been submitted by the Landlord on the morning of the hearing. This evidence was not timely submitted and was not considered.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant ended the Tenancy Agreement early, was given two opportunities to have a move out inspection and left the rental unit in a damaged, unclean state. Under section 45 of the Act, the Tenant could not end the tenancy early, even if she had given a proper one month notice to the Landlord.

I further find the Tenant had insufficient evidence that she had provided the Landlord with her forwarding address in writing, prior to filing her Application. The Landlord did apply within the required time following service of the Tenant's Application.

Residential Tenancy Branch Policy Guideline #4 (Liquidated Damages) states that in order to be enforceable, a liquidated damages clause in a tenancy agreement must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If the liquidated damage clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible. The Landlord claims the liquidated damages were intended to compensate them for their time and expense in advertising the rental unit as a result of the early end to tenancy by the Tenant. I find the liquidated damages clause to be enforceable.

I find that the Landlord has established a total monetary claim of **\$1,000.00**, comprised of cleaning in the amount of \$330.00 blind and key replacement in the amount of \$70.00, over holding suite in the amount of \$75.00, liquidated damages in the amount of \$475.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$475.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$525.00**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I find that the Tenant's Application for the return of all or part pet damage deposit or security deposit and the filing fee is dismissed.

Conclusion

The Tenant breached section 45 and ended her tenancy early, failed to clean and repair the suite prior to vacating the suite, agreed to pay liquidated damages and failed to attend the move out inspection after two opportunities.

The Landlord is granted a monetary order in the amount of \$525.00.

The Tenant's Application for Dispute Resolution 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: September 1, 2010.

Dispute Resolution Officer