



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy was set to run for a fixed term which was to expire on June 30, 2010 and that the tenancy agreement contains a liquidated damages provision which provides that \$950.00 will be payable in the event the tenant ended the tenancy prior to the end of the fixed term. The parties further agreed that the tenant gave notice to vacate effective March 31, 2010.

The tenant testified that several days after having given notice, he approached an agent of the landlord, stated that he wished to remain in the rental unit and was advised that the unit had already been re-rented. The tenant argued that as there was no period of vacancy, the landlord should not be entitled to liquidated damages.

Analysis

The tenant agreed to the liquidated damages term at the time he entered into the tenancy agreement. The landlord does not bear the burden of proving a period of vacancy in order to claim liquidated damages. I find that the sum stipulated is not so high as to be a penalty and I find no basis on which the term can be found to be unenforceable. Although the tenant attempted to withdraw his notice, a notice to end a tenancy cannot be unilaterally withdrawn and the landlord was within its rights to decline to agree to the withdrawal.

I find that the tenant is liable for liquidated damages and I award the landlord \$950.00. I find that the landlord is also entitled to recover the \$50.00 filing fee paid to bring this application and I award the landlord \$50.00.

Conclusion

The landlord is awarded a total of \$1,000.00. I grant the landlord a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: January 19, 2011

Residential Tenancy Branch