



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two of the landlord's agents and a witness. The tenant did not attend.

The landlord testified the tenant was served via registered mail to the forwarding address provided by the tenant (at least three separate times) on October 18, 2010 and provided the tracking number as confirmation of that service.

Section 90 of the *Residential Tenancy Act (Act)* stipulates that documents served in this manner are deemed to be received 5 days after mailing them. I find the tenant has been served in accordance with the *Act* and sufficiently for this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for monies owed or compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 10, 2010 for a 1 year fixed term tenancy beginning on February 13, 2010 for a monthly rent of \$795.00 due on the 1st of each month and a security deposit of \$400.00 was paid on February 10, 2010.

The tenancy agreement provides a liquidated damages clause (Clause # 5) that states: "If the tenant ends the tenancy agreement in less than _____ months from the start of the tenancy agreement, the tenant agrees to pay \$400.00 to the landlord as a genuine pre-estimate of the landlord's costs for re-renting the rental unit."

The landlord contends that the meaning of the clause is that if the tenant ends the tenancy at any time prior to the end of the fixed term and that is the standard practice of this landlord.

The landlord seeks unpaid rent from the tenant resulting from providing a "short" notice to end tenancy. The landlord submitted into evidence a notice from the tenant dated September 13, 2010 stating that he will ending the tenancy on September 30, 2010. The landlord testified that they were able to re-rent the unit out by October 21, 2010 and reduces his claim by \$282.10.

The landlord has provided documentation, in the form of a Condition Inspection Report that records the condition of the rental unit at the end of the tenancy including the associated costs for cleaning of the rental unit, draperies, and carpets. The landlord submits that value of cleaning the rental unit was \$202.00 and drapery cleaning was \$26.00.

While the landlord did not provide a receipt for the carpet cleaning he did provide a witness from the carpet cleaners to provide testimony confirming the cleaning was completed and the value of that cleaning to be \$156.74.

Analysis

In the absence of any contrary testimony, I accept the landlord's evidence and testimony and find the landlord is entitled to unpaid rent from the tenant in the amount of \$512.90.

I also accept the landlord's evidence and testimony regarding the charges for cleaning the unit; draperies and carpets for a total amount of \$384.74 owed by the tenant for cleaning in general.

As to the landlord's claim for liquidated damages, as Clause # 5 of the tenancy agreement as noted above is incomplete, I find that it is unclear as to both parties' expectations regarding when the landlord could seek liquidated damages.

Despite the landlord's assertion that liquidated damages could be invoked at any time during the fixed term that the tenant ends the tenancy, I find that I cannot determine what the tenant understood to be the duration of time he must wait to end the tenancy without the possibility that the landlord might seek compensation.

As a result, I find the clause, by virtue of its incompleteness, to not clearly communicate the obligations of the tenant. Section 6 of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$947.64** comprised of \$512.90 rent owed; \$384.74 all cleaning charges and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$547.64**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: February 15, 2011.

Residential Tenancy Branch