



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for a rental penalty, for costs to repair damage to the blinds and floors, for a phone bill and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant spoke no English at all and kept repeating the word “Arabic” several times through the call. I informed him that I did not speak Arabic and that it was his responsibility to make arrangements for an interpreter, prior to the hearing. The hearing continued on.

Issues to be decided

Has the landlord established a claim for costs incurred to repair the blinds and floor, for the phone bill and for the penalty that she is seeking?

Background and Evidence

The tenants are foreign students. The parties entered into a three year fixed term lease starting February 24, 2011. Rent was \$1,850.00 due on the 24th of each month. The landlord provided the students with a bedroom, kitchen and washroom. The landlord provided meals and transported the students to school and back.

The landlord stated that on March 24, 2011, she asked the tenant to pay rent that was due that day. Later that day she went out and when she returned, she was assaulted by the tenants and a friend of the tenants. The landlord stated that they attacked her and robbed money from her home. The landlord called 911 and provided a police file number. The tenants then proceeded to wheel their packed suitcases out of the home. The landlord stated that while doing so they caused damage to a window blind and the wooden flooring. The landlord is claiming \$200.00 to repair the damage.

The landlord also stated that she loaned the tenants two phones and they ran up bills in the amount of \$56.00. The landlord did not file any evidence to support her claim for damages.

The landlord stated that the tenants had broken a three year term and she is claiming the equivalent of three months' rent as a penalty for doing so. A term of the tenancy agreement states "*There will be a penalty for 3 months rent if you plan to break the contract and to vacate the premise before the end term of the contract*"

Analysis

Section 4 of the *Residential Tenancy Policy Guideline* deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the 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.

In this case, the clause states that the liquidated damages payable is a penalty and therefore I find that this clause is unenforceable. Accordingly the landlord's claim for the equivalent of three months' rent is dismissed.

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord any written notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of April and the balance of the term. Accordingly, I find that the landlord is entitled to **\$1,850.00**, which is the loss that she suffered for the month following the end of the tenancy.

The landlord did not file any evidence to support her claim for repairs or the phone bill. Accordingly these claims are dismissed. Since the landlord has proven a portion of her claim, I find that she is entitled to the recovery of the filing fee.

Overall the landlord has established a claim in the amount of \$1,900.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for the amount of **\$1,900.00**

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: July 12, 2011.

Residential Tenancy Branch