



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for liquidated damages, refund of rental incentive and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The landlord testified that she served the notice of hearing by registered mail to the tenant, at the forwarding address provided by the tenant. The landlord filed a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for liquidated damages, return of the rental incentive and for the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on September 01, 2010 for a fixed term of one year, ending on September 01, 2011. Prior to moving in, the tenant paid a security deposit of \$50.00. The monthly rent was \$750.00 payable on the first day of each month. The tenancy agreement contained a clause that requires a tenant to pay liquidated damages in the event the tenant ends the tenancy prior to the end date of the agreement. The liquidated damages of \$350.00 will cover the administration costs of re-renting the unit such as advertising, interviewing etc.

At the start of tenancy, the tenant was given an incentive to enter into a fixed term of one year. Upon signing the lease he was given a rebate of \$62.00 off his monthly rent. The incentive agreement that the tenant signed included a term that stated that if the tenant ended the tenancy prior to the end date of the fixed term, the incentive would have to be repaid to the landlord. The tenant ended the tenancy prior to the end date and moved out on April 30, 2011. The landlord is claiming the return of the incentive given to the tenant for the eight months of the tenancy in the amount of \$496.00.

The landlord has filed evidence to support all of the above claims by way of the tenancy agreement and the rental incentive agreement signed by the both parties.

Analysis

Residential Tenancy Policy Guideline# 4 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.

Based on the documentary and oral evidence of the landlord, I find that the liquidated damages clause in the tenancy agreement is valid and therefore the landlord is entitled to her claim of \$350.00.

The landlord has also filed the rental incentive agreement which is signed by the tenant. The tenant ended the tenancy prematurely and therefore I find that the landlord is entitled to the return of the incentive in the amount of \$496.00. Since the landlord has proven her case, she is also entitled to the filing fee of \$50.00.

Overall the landlord has established a claim of \$896.00. I order that the landlord retain the security deposit of \$50.00 in satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$846.00. 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 in the amount of **\$846.00**.

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: August 18, 2011.

Residential Tenancy Branch