



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the landlords seeking an Order to keep the tenants security deposit and to recover the filing fee for this application.

I am satisfied that service of the hearing documents was done in accordance with section 89 of the *Act*, the tenant confirmed receipt of this package.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on November 01, 2010. Rent for this unit is \$925.00 per month and is due on the 1st day of each month. This was a fixed term tenancy which was due to expire on October 31, 2011. The tenant paid a security deposit of \$426.50 on October 08, 2010. Both Parties attended a move in and a move out condition inspection of the unit and the tenant gave the landlord her forwarding address on May 31, 2011 when she vacated the rental unit.

The landlords' agent testifies the tenancy agreement signed by the tenant says if the tenant ends the tenancy before the end of the fixed term the tenant must pay to the landlord the sum of \$450.00 as liquidated damages and not as a penalty. These are a pre-estimate of the landlords' costs of re-renting the unit. The landlord testifies that the tenant did end the tenancy on May 31, 2011 and therefore must pay the landlord liquidated damages of \$450.00.

The landlords' agent states this sum is used to cover their costs to advertise the unit and associated costs involved in re-renting the unit. They are not made to punish the tenant.

The tenant testifies she had to end her tenancy because of her medical condition. The tenant testifies that she rented this unit because she had a friend living in the building who gave her the required medical support she needed to live alone. The tenant testifies this friend left the building and she no longer had any support. Due to her medical condition she could not remain living in the unit without this support and had to end her tenancy.

The tenant states she is aware of this clause in the tenancy agreement and knew the landlord could apply this charge to her. However she asks for her medical circumstances to be taken into consideration. The tenant also states that she was told by another of the landlords' agents that everything in her unit was in good order and she would be receiving her security deposit back.

The landlords agent testifies he cannot verify what the tenant was told as it was a relief manager working at that time who may not have known about this clause in the tenancy agreement. The landlord agrees the tenants unit was left in a good condition.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant signs a tenancy agreement this document becomes a legally binding agreement and as such both parties are governed by the agreement.

I find the tenant did end the tenancy on May 31, 2011 and although she has described some mitigating factors as to why she had to end her tenancy the *Act* does not allow me to alter a material term of a tenancy agreement between the tenant and landlord.

Consequently, the landlords' application to keep part of the tenants security deposit for liquidated damages is upheld to the sum of \$450.00 and the landlord may deduct this from the tenants security deposit pursuant to s. 38 (4)(b) of the *Act*.

I further find as the landlord has been successful with his claim he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act* and may deduct this amount from the balance of the security deposit of \$12.50. The landlord will receive a Monetary Order for the remainder of \$37.50.

Conclusion

I HEREBY FIND in favor of the landlord's claim. The landlord may retain the tenants' security deposit of \$450.00 and a copy of the landlord's decision will be accompanied by a Monetary Order for **\$37.50**. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 14, 2011.

Residential Tenancy Branch