



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for liquidated damages, mailing costs and the filing fee. The landlord also applied to retain the security deposit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for liquidated damages, mailing costs and for the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on September 01, 2010 for a fixed term of one year, ending on August 31, 2011. The monthly rent was \$1,550.00. Prior to moving in, the tenant paid a security deposit of \$750.00.

Both parties filed a copy of the tenancy agreement. The liquidated damages provision provides as follows.

If the tenant ends the fixed term tenancy before the end of the original term as set out in (b) above, the landlord may, at the landlord's option treat this Agreement as being at an end. In such event, the sum of \$1,550 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said premises. The landlord and the tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the Residential premises and the residential property, damages as a result of rental income due to the tenant's breach of the terms of this agreement.

The tenant testified that at the end of May, he gave the landlord verbal and written notice to end the tenancy effective June 30, 2011. In his written submission, the tenant stated that the rental unit was sold and the agent for the landlord advised him that the new owner may have plans for the unit in the latter part of the year. The tenant decided to find a place immediately as it would be difficult to find something suitable for his family of five later on.

The landlord stated that he did not receive a written notice from the tenant. However, after the tenant moved out on June 30, 2011, the landlord did not make any attempts to re-rent the unit until the end of August. He stated that the owner of the unit was not sure whether he wanted to renovate, re-rent or sell the rental unit. At the time of the hearing, the unit was vacant.

The landlord is claiming the following:

1.	Liquidated damages	\$1,550.00
2.	Mailing costs	\$15.00
3.	Filing fee	\$50.00
	Total	\$1,615.00

Analysis

In the tenancy agreement the landlord records the amount of the liquidated damages to be paid in the event the tenant ends the tenancy prior to the end date, as \$1,550.00. Section 4 of the *Residential Tenancy Policy Guideline* addresses liquidated damages and states that 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.

One of the tests to determine if the clause is a penalty clause or a liquidated damages clause is that the sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. In this case, I find that \$1,550.00 is extravagant compared to the cost that the landlord would incur to re rent the unit and therefore I have determined that the liquidated damages clause is a penalty and accordingly is not valid.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for mailing costs is dismissed. The landlord has not proven his case and therefore must bear the cost of filing his own application.

I order the landlord to return the full security deposit of \$750.00 to the tenant within 15 days of receipt of this decision.

Conclusion

The landlord must return **\$750.00** to the tenant.

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: October 04, 2011.

Residential Tenancy Branch