

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord has applied for a monetary order liquidated damages for early termination of the Tenancy Agreement, to keep all or part of the security deposit and recovery of the filing fee. The Tenant has applied for a monetary order for the return of double the security deposit, money owed under the Act, regulation or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties have acknowledged receiving the evidence package of the other. As each party has attended the hearing and has acknowledged receiving the notice of hearing and evidence package of the other, I am satisfied that each party has been properly served under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for liquidated damages?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to a monetary order for the return of double the security deposit and money owed?

Background and Evidence

Both parties agree that this Tenancy began on August 1, 2011 on a fixed term tenancy ending on July 31, 2012 as shown in the submitted copy of the signed tenancy agreement. Both parties agree that the Tenancy ended on November 30, 2011. The monthly rent was \$1,350.00 payable on the 1st of each month. A security deposit of \$675.00 was paid on July 17, 2011. Both parties also agree that the forwarding address in writing was received by the Landlord on November 30, 2011.

The Landlord is seeking a monetary order for liquidated damages of \$1,375.00. The Tenant disputes this. The Landlord relies on clause #1 of the signed tenancy agreement. It states,

"If the Tenant ends the fixed term tenancy before the end of the original term as set out above, the Landlord may, at the Landlord's option, treat this Tenancy Agreement as being at an end. In such event, the Tenant shall pay to the Landlord, as liquidated damages and not as a penalty, i.e., one month's rent, for re-renting the said premises."

When questioned why there was no specified amount, the Landlord stated that the "one month's rent" was a standard in the Landlord's Tenancy Agreements. The Landlord stated that if the monthly rent was \$2,000.00 then the liquidated damages amount would equal \$2,000.00 in the same circumstances.

The Tenants are seeking a monetary order for the return of double the security deposit totalling, \$1,350.00 (\$675.00 X 2) and \$1,350.00 for the return of November 2011 rent paid. The Tenants state that although rent was paid until November 30, 2011, the Tenants had to move out on November 1, 2011 because of the Tenant, J.F.'s health problems. The Tenants state that there was an outbreak of cockroaches, which the Landlord has confirmed. Both parties agree that the Tenant reported the issue to the Landlord 3 times from September 2011 to October 2011 and each time the Landlord dispatched a pest control company to deal with the problem. The Tenant states that notice to vacate was given to the Landlord by email on October 24, 2011. The Tenants moved out on November 1, 2011.

Analysis

Residential Tenancy Policy Guideline #4 state, 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. The Landlord has not provided any evidence of the pre-estimate amount. The tenancy agreement does not specify an amount, it only refers to "one month's rent". I find that this liquidated damages clause is a penalty. The Landlord stated in her direct testimony that this was a standard term in their tenancy agreements and that if the rent were \$2,000.00 as opposed to the \$1,350.00 in this case, that the liquidated damages being sought would be \$2,000.00. The Landlord has provided no evidence of a genuine pre-estimate. The Landlord's application is dismissed.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage
deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit
or pet damage deposit.

The forwarding address in writing was received on the November 30, 2011. The end of tenancy was November 30, 2011. The Landlord applied for dispute resolution on December 15, 2011. I find that the Landlord has complied with the Act and as such, the Tenant's application for the return of double the security deposit is dismissed.

The Tenant is also seeking the return of November 2011 rent of \$1,350.00. The Tenants state that the outbreak of cockroaches that impacted the Tenants health concerns forced them to leave on November 1, 2011 to start a new Tenancy elsewhere. I find based upon the direct testimony of both parties that the Landlord responded appropriately by dispatching pest control technicians to deal with the problem each time. The Tenant is not entitled to recovery of November rent of \$1,350.00. The Tenant's application is dismissed.

As both parties have been unsuccessful in their applications, I decline to order recovery of the filing fees for each party. As this Tenancy has ended and there are no other outstanding issues, I grant the Tenant a monetary order for the return of the original security deposit of \$675.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order of \$675.00 for the return of the security deposit.

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 28, 2012.

Residential Tenancy Branch