



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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for lost rental income – Section 67;
2. An Order to retain all or part of the security deposit; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The fixed term tenancy began on December 1, 2011 with an end date of November 30, 2011. The Tenants provided a month’s notice and ended the tenancy for September 30, 2011. Rent of \$975.00 was payable monthly and the Landlord collected \$487.50 as a security deposit at the onset of the tenancy.

The Parties agree that the Tenants owe the Landlord \$300.00 as liquidated damages and \$200.00 for return of the move-in bonus due to ending the tenancy before the fixed term expiry. The Landlord states that the unit was advertised immediately on August 31, 2011 but was unable to find a new tenant for the unit until November 1, 2011. The

Landlord claims lost rental income of \$975.00 in addition to the agreed amount of \$500.00 noted above.

The Tenants state that the tenancy does not contain anything requiring the Tenants to pay the Landlord any more than what was agreed in the tenancy agreement upon ending the tenancy early. Further, the Tenants state that the Landlord did not do their job in re-renting the unit and that this inaction caused the lost rental income.

Analysis

Where a tenancy agreement contains a liquidated damages clause, this indicates that the parties have agreed to an amount of damages payable in the event of a breach in the tenancy agreement. Further, this amount functions as an upper limit on the damages payable resulting from a breach even though the actual damages may be greater than the liquidated damages amount. Given the liquidated damages clause in the tenancy agreement, I find that the Tenants are not required to pay an extra amount for lost rental income as a result of their ending of the tenancy early and I therefore dismiss this part of the Landlord's claim. Given the agreement of the Parties on the amount owing to the Landlord, I find that the Landlord is entitled to a monetary amount of **\$500.00**. As the Landlord has been only partially successful with their claim, I decline to make an award for the recovery of the filing fee. I order the Landlord to retain the security deposit plus interest in the amount of **\$487.50** in partial satisfaction of the claim and order the Tenants to pay the Landlord forthwith the remaining amount of **\$12.50** owing.

Conclusion

I order the Landlord to retain the security deposit plus interest in the amount of **\$487.50** in partial satisfaction of the claim and order the Tenants to pay the Landlord forthwith the remaining amount of **\$12.50**.

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 13, 2012.

Residential Tenancy Branch