



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for unpaid rent, for liquidated damages, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for liquidated damages?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on March 1, 2012 and expired on February 28, 2012. The Tenant moved in on February 15, 2012 and moved out on January 31, 2012. Rent was \$750.00 per month. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy. The Landlord seeks compensation pursuant to a term of the tenancy agreement which states as follows:

"If the Tenant ends the tenancy in less than 6 months, \$350.00 + concession will be charged by the Landlord and the Tenant will pay this amount as a service charge for tenancy change over costs..."

The Landlord's agent conceded that as the tenancy lasted longer than 6 months the Landlord may not be entitled to make a claim for liquidated damages however she argued that the Landlord was still entitled to compensation for "(rent) concession" pursuant to a "Rental Incentive Agreement," which provides as follows:

"Upon signing a 12 month lease agreement the tenant will receive a monthly rental concession in the amount of \$94.00 for the term of the lease....If the Tenant breaks the lease ***within the specified time*** [emphasis added] any and all lease incentives agreed upon during the lease term will be immediately due and payable to the [Landlord]."

The Landlord's agent said she did not know why someone had hand-written "+ concession" in the liquidated damages clause of the tenancy agreement and argued that the "specified term" set out in the Rental Incentive Agreement referred to the fixed term tenancy. The Landlord's agent admitted that "specified term" was not defined in the Rental Incentive Agreement.

Analysis

Based on the liquidated damages clause set out in the Parties' tenancy agreement, I find that the Landlord is only entitled to recover liquidated damages in the event the tenancy ended prior to six months. As the tenancy lasted more than six months, I find that the Landlord is not entitled to liquidated damages and that part of its application is dismissed without leave to reapply.

I also find that the Landlord is not entitled to recover "concession" expenses. Had the Landlord completed only the Rental Incentive Agreement, I would agree that the "specified term" referred to in that agreement would apply to the fixed term with the result that if the Tenant ended the tenancy prior to the 12 month fixed term the Landlord might be entitled to recover \$94.00 per month for 11 months. However, by the Landlord's agent deliberately adding the words "+ concession" to the liquidated damages clause, I find that the "*specified term*" instead applies to the six month period referred to in that clause. As the tenancy lasted more than six months, I find that the Landlord is not entitled to recover unpaid rent or rental concessions in the total amount of \$1,034.00 and that part of its application is dismissed without leave to reapply.

Conclusion

The Landlord's application is dismissed without leave to reapply. A Monetary Order in the amount of **\$375.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: April 10, 2012.

Residential Tenancy Branch