



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$725.00 which includes a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- The tenants breached a fixed term tenancy agreement that had a liquidated damages clause in which the tenants agreed to pay \$425.00 if they left the tenancy prior to the end of the fixed term.
- The tenants vacated the rental unit on February 26, 2012 even though the fixed term of the tenancy did not end until October 31, 2012.
- Also when the tenant moved out they found that some closet doors were missing and the cost to replace those doors is \$250.00.

The applicants are therefore requesting an order as follows:

Liquidated Damages	\$425.00
Replace closet doors	\$250.00
Filing fee	\$50.00
Total	\$725.00

The respondent testified that:

- When they moved out of the rental unit the landlord was very pleased with the condition in which they left it and in fact told them and subsequently sent them a letter saying that they were foregoing the requirement to pay the liquidated damages.
- The landlord also did not do a move in inspection report when they moved into the rental unit, and at that time there were no closet doors. They did not remove any closet doors.

In response to the tenant's testimony the landlord testified that:

- They did agree to forgo the liquidated damages, however after the tenants made a claim against them for return of the security deposit they decided that they would claim liquidated damages.
- They did not do a move in inspection report, because the tenant was moving in right after her sister was moving out and they are sure that there were closet doors in the rental unit when the tenant moved in.

Analysis

It is my decision that the landlords have waived their right to claim liquidated damages, because they agreed in writing to forgo a claim for liquidated damages.

It is also my finding that the landlords have not met the burden of proving that the tenants removed any closet doors. The tenant claims that the closet doors were

missing when they moved into the rental unit, and since there is no move in inspection report, it is just the landlords word against that of the tenants.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Conclusion

This application is dismissed in full without leave to reapply.

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: June 27, 2012.

Residential Tenancy Branch