

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

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

It was clarified by the Tenant that the proper spelling of her name is DEMCH as opposed to the Landlord's application indicating DEMEH or DEMOH. This was confirmed by the submitted copy of the signed tenancy agreement. As such, this application and any subsequent orders shall be amended.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background, Evidence and Analysis

This Tenancy began on October 1, 2011 on a fixed term tenancy until September 30, 2012 as shown in the submitted signed tenancy agreement. The monthly rent was \$1,420.00 per month payable on the 1st of each month. A security deposit of \$710.00 was paid. A condition inspection report for the move-in was completed on September 23, 2011 and a move-out report was completed on April 27, 2012. The Tenancy ended on April 30, 2012.

The Landlord seeks a monetary order for \$4,970.00 consisting of \$4,260.00 for compensation as a stated in the liquidated damages clause and to keep the \$710.00

security deposit as compensation as part of the liquidated damages for breaching the fixed term lease.

The Landlord's liquidated damages clause states, "However, if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat this Tenancy Agreement at an end and in such event, the sum of \$4,260.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other rights or remedies available to the Landlord."

The Landlord explains that the liquidated damages being sought is equal to 3 times the monthly rent. Both parties agreed that the rental "unit is ok". As shown on the completed condition inspection report for the move-out completed on April 27, 2012.

Residential Tenancy Policy Guideline #4 states,

" A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. **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.** In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into."

I find that the Landlord has failed to satisfy me that 3 times the monthly rent is a genuine pre-estimate of the loss. The Landlord has only stated that it was a standard amount set by her administrative office. I find that this clause constitutes a penalty and is unenforceable. This portion of the application is dismissed.

The Landlord has also failed to provide sufficient evidence as to why the security deposit should be retained on top of the Landlord's liquidated damages. The Landlord stated that she was instructed to request the security deposit and was unable to clarify why. As such, this portion of the Landlord's claim is dismissed.

The Landlord's monetary application is dismissed without leave to reapply.

As the Tenancy is at an end and the Landlord's claim has failed, I grant the Tenant a monetary order for \$710.00 for the return of the security deposit.

Conclusion

The Landlord's application is dismissed.

The Tenant is granted a monetary order for \$710.00.

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: July 04, 2012.

Residential Tenancy Branch