



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on the property manager's application of June 5, 2012 seeking authorization to retain the tenant's security deposit in set off against liquidated damages, a claim invoked by the tenant's breach of the fixed term rental agreement by leaving early. The property manager also seeks to recover the filing fee for this proceeding from the tenant.

Issue(s) to be Decided

Is the property manager entitled to authorization to retain the security deposit in set off against liquidated damages and recovery of the filing fee?

Background and Evidence

This tenancy began on October 1, 2011 under a one year fixed term rental agreement. Rent was \$1,000 per month and the landlord holds a security deposit of \$500 paid at the beginning of the tenancy. The tenant gave notice on April 30, 2012 and left the tenancy on May 31, 2012.

During the hearing, the property manager gave verbal evidence that the \$500 claim was based on the fee the property manager charges the landlord for finding a new tenant. The landlord concurred that there is no liquidated damages clause in the rental agreement and he has not made claim for damage or loss and has submitted no documentary evidence in support of the \$500 fee.

The tenant and one witness gave evidence that, when the tenant was first shown the rental agreement, the property manager stated that there was no lease, an assertion challenged by the property manager. The tenant stated that he signed the fixed term agreement on third day after moving in because he could not afford to move.

The tenant and a witness also stated that they had not been permitted to participate in the move-out condition inspection whereas the property manager stated that he had simply offered them the opportunity to wait outside if they so wished.

Analysis

On the issue of whether the rental unit was misrepresented as available as a month to month tenancy, I find that by signing the fixed term agreement, the tenant did commit to a fixed term tenancy. If he believed there was misrepresentation, it was available to him to decline to sign the agreement and seek remedy through dispute resolution and/or to await action by the landlord and respond accordingly. Payment and acceptance of the security deposit created a tenancy and the tenant was not obliged to accept what he holds to be unilaterally a amended term. Having signed the agreement, he was obliged to honour it.

I find that the discussion about the move-out condition inspection report is moot as there is no claim for damage to the rental unit.

On the claim for liquidated damages, section 4 of the Residential Tenancy Policy Guidelines states, in part:

“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.”

In the absence of such a clause in the subject rental agreement, I must find that there is no agreement with respect to liquidated damages.

Therefore, I must dismiss the landlord's application without leave to reapply.

Conclusion

The application is dismissed without leave to reapply.

In the interests of administrative efficiency, the tenant's copy of this decision is accompanied by a Monetary Order for \$500 for return of the contested 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: August 02, 2012.

Residential Tenancy Branch