



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD

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 an application for a monetary order for \$1650.00, a request for an order for recovery of the \$50.00 filing fee, and a request to retain the full security deposit of \$550.00 towards the claim.

Background and Evidence

The applicant testified that:

- On July 24, 2012 the applicant signed a fixed term tenancy agreement that was to begin on September 1, 2012 and run to the end of August 2013.
- The rent for this unit was set at \$1100.00 per month and the tenants paid a security deposit of \$550.00.
- On August 21, 2012 she received an e-mail from the tenants stating that they were no longer going to be taking the rental unit.
- They immediately attempted to re-rent the unit but were unable to re-rent the unit until October 1, 2012 and therefore they lost the full rental revenue for the month of September 2012.
- The tenancy agreement also has liquidated damages clause that states that the tenants will pay \$550.00 as liquidated damages if the tenants terminate the tenancy before the end of the original term.

The applicant is therefore requesting an order as follows:

Lost rental revenue for September 2012	\$1100.00
Liquidated damages	\$550.00
Filing fee	\$50.00
Total	\$1700.00

The respondents testified that:

- They did sign an agreement on July 24, 2012 to rent this unit beginning September 1, 2012 for a one-year term.
- They decided not to move into the rental unit due to the fact that the building was not secure, as the main building could be entered from the parkade through unlocked doors, the new carpets that had been promised for the hallways of the building had not been done and were not going to be done by the move-in date, and the general care of the building was poor.
- They therefore, on August 21, 2012, sent the landlord an e-mail stating that they will not be advancing on the rental of the unit and requesting the return of their damage deposit.
- They were never told by the landlord that the parkade area doors were unlocked only during the term of the renovations.
- They have gone back to the rental unit and the carpets in the hallways of this rental property have still not been changed and although locks have been put on the doors from the parkade, they are poor quality locks that could easily be opened.
- They therefore believe they were justified in not moving into the rental unit and believe the landlords claim should be dismissed.

Analysis

It is my finding that the tenants were bound by the tenancy agreement they signed on July 24, 2012, and they did not have grounds to end this tenancy before the end of the term.

The tenants claim that they felt the building was not secure and that upgrades were not going to be done as promised, however the tenants have provided no evidence to show that they ever provided the landlord with a written request to resolve the issues prior to informing the landlords they were not going to proceed with the tenancy.

Further, although the tenants claim they were promised that upgrades would be made prior to their tenancy commencing, they provided no evidence in support of that claim.

The landlord admitted that the tenants were informed that upgrades were being done, but denies there was any promise that the upgrades would be completed prior to the beginning of the tenancy.

Therefore it is my decision that I will allow a portion of the landlords claim.

I allow the landlords claim for \$550.00 in liquidated damages because the tenancy agreement states that if the tenant terminates the tenancy before the end of the original term of the landlord may treat this tenancy agreement at an end and in such an event the sum of \$550.00 shall be paid by the tenant to the landlord as liquidated damages and not as a penalty.

Liquidated damages are meant to be a reasonable pre-estimate of the likely losses that could result from the breach of a tenancy agreement, and both sides are bound by that amount. Therefore if the tenant breaches the tenancy agreement the tenant is required to pay \$550.00, however the landlord is also limited to a claim of \$550.00.

Therefore it is my decision that I will only allow the claim for the \$550.00 allowed in the liquidated damages clause and I deny the further claim for \$1100.00 lost rental revenue.

I will however order recovery of the \$50.00 filing fee.

Conclusion

I have allowed \$600.00 of the landlords claim and I therefore order that the landlords may retain the full security deposit of \$550.00, and I have issued a monetary order in the amount of \$50.00.

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: November 07, 2012.

Residential Tenancy Branch