



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order authorizing him to retain the security deposit and an order for the recovery of the filing fee paid to bring this application. The tenant did not participate in the conference call hearing.

At the hearing, the landlord testified that he served the tenant with the application for dispute resolution and notice of hearing via registered mail sent to the address which the tenant had written on the move-out condition inspection report. The letter was returned to the landlord as unclaimed. As the tenant cannot avoid service by failing to claim registered letters, I found that the landlord served the tenant in accordance with the Act and the hearing proceeded in the tenant's absence.

Issue to be Decided

Should the landlord be permitted to retain the security deposit?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenancy began on March 15, 2012 and was set to run for a fixed term of one year, ending on March 31, 2013. The tenant paid a \$462.50 security deposit at the outset of the tenancy. The tenancy agreement had a liquidated damages clause which was initialled by the tenant and provides in part as follows:

If the Tenant ends the tenancy before the end of the original term (clause 2(b)), the Landlord may, at the Landlord's option, treat this Tenancy Agreement at an end and in such an event, the sum of \$462.50 shall be paid by the Tenant as liquidated damages and not as a penalty to cover the administration costs of re-renting the said premises.

On or about June 30, 2012, the tenant gave the landlord written notice that he would be ending the tenancy on July 31, 2012 because he had lost quiet enjoyment of the property. The landlord seeks to retain the security deposit as liquidated damages.

Analysis

The tenant is bound by the terms of the tenancy agreement unless the landlord agrees to release him from his obligations or unless he has a statutory right to end the tenancy prior to fulfilling his commitment.

Section 45(3) of the Act specifies the procedure a tenant is supposed to follow when he believes that the landlord has failed to comply with a material term of the tenancy agreement. To paraphrase this provision, the tenant is required to give the landlord written notice of the failure and give the landlord a reasonable opportunity to correct the situation. Only after having completed those steps and only if the landlord fails to correct the situation within a reasonable time may the tenant end the tenancy prior to the end of the fixed term and escape liability.

I find that the tenant did not follow the procedure prescribed by section 45(3) and I find that the tenant is thereby liable for the sum he agreed to pay if he ended the tenancy early. I find that the landlord is entitled to recover \$462.50 and I award him that sum. I order the landlord to retain the security deposit in full satisfaction of this award.

As the landlord has been successful in his claim, I find that he is entitled to recover the \$50.00 filing fee paid to bring his application and I award him \$50.00. I grant the landlord a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain the security deposit and is granted a monetary order for \$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: January 07, 2013

Residential Tenancy Branch

