



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P255 Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on the landlord's application of April 8, 2013 seeking authorization to retain the tenant's security and pet damage deposits in set off against liquidated damages after the tenant breached the fixed term rental agreement by leaving early. The application had set out anticipated losses if the rental unit had remained vacant, but a new tenancy had begun immediately.

Issue(s) to be Decided

Is the landlord entitled to retain the security and pet damage deposits in set off against the liquidated damages clause?

Background and Evidence

This tenancy began on November 16, 2012 under a fixed term rental agreement set to end on June 30, 2013. Rent was \$700 per month plus \$100 utilities and the landlord holds security and pet damage deposits of \$350 each paid on November 1, 2012 and November 16, 2012 respectively.

During the hearing, the parties gave evidence that the tenant had given notice on March 25, 2013 that he would be leaving the tenancy in April 2013. The tenant stated that he had paid the full rent for April 2013 but had vacated on or about April 15, 2013 and the landlord was able to find new tenants for May 1, 2013.

The tenant stated that he had initially agreed with the landlord to sign a six-month fixed term agreement, but that when he was in the process of moving in, the landlord had presented him with an agreement for seven and one-half months and placed him in a position in which he had no option but to sign the agreement.

The landlord stated that the tenant was aware in advance that the agreement would be for a fixed term to June 30, 2013.

The tenant stated that he found the liquidated damages claim to be unfair as new tenants had been found quickly and the landlord's costs had been minimal.

The tenant also articulated grievances that the landlord had entered the rental unit without consent, an assertion disputed by the landlord, and that the landlord had once charged him \$25 to let him in to the rental unit when he had misplaced his key, a charge she explained by noting that she had to drive 20 miles in order to open the rental unit.

While the tenant has not made application on those claims, I would note the remedy for the former, if found valid, might be an order limiting landlord access which would be moot as the tenancy has ended. As to the latter, the regulations are silent on whether a landlord may charge for opening the door for the tenant.

Analysis

Section 45(2) of the *Act* provides that a tenant's notice to end a fixed term rental agreement may not set an end date before the end date set by the agreement.

While the tenant alleges he was misled on the question of the end date, the landlord is equally certain that the tenant was fully informed of the terms of the agreement.

Given the opposing oral evidence parties I am left with the rental agreement and must find that the tenant agreed to the fixed term ending on June 30, 2013.

As to the tenant's concern that the landlord's actual loss due to the breach of the fixed term was minimal, *Residential Tenancy Policy Guideline #4* instructs that:

"If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause."

In the present matter, while the liquidated damage clause set by the rental agreement is \$750, the landlord stated that she would simply accept authorization to retain the security and pet damage deposits, a total of \$700, in full settlement of her claim.

While at the higher end as a proportion of rent, I find the liquidated damages clause is valid and that the landlord is entitled to the compensation sought.

As authorized by section 72 of the *Act*, I hereby order that the landlord may retain the security and pet damage deposits of \$350 each in full and final satisfaction of the landlord's claim for liquidated damages.

Conclusion

The landlord is authorized to retain the security and pet damage deposits totalling \$700.

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 05, 2013

Residential Tenancy Branch

