



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking a monetary order and recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving her claim?

Background and Evidence

This tenancy began on July 1, 2012 for a fixed term ending June 30, 2013. Rent was fixed at \$3,800.00 per month payable on the first day of the month and the tenant's paid a security deposit of \$1,900.00 and a pet deposit of \$1,900.00. Despite the fixed term the landlord says the tenant vacated early on January 31, 2013. The parties agree the tenants gave 3 months notice of their intention to vacate early. The tenant says she thought the landlord was in agreement with the early termination and they have since rented a new rental unit from the same corporate landlord. The tenant submits that she had no idea she would be expected to pay rent at both units.

The landlord referred to Clause 3.0 of the tenancy agreement entitled "Early Termination" which states:

That in the event of an early termination, the Tenant acknowledges and agrees that pursuant to this Lease, Tenant is responsible for the monthly rent until such time as the property has been re-rented by the landlord to a qualified and suitable tenant and a written lease agreement with such party has been entered into;

The Tenant further agrees that upon termination, the Tenant shall pay an early termination fee of 50% of one month's rent. This amount is to reimburse the Landlord for the placement fee charged by its agent and for finding a new tenant. The early termination fee is due and payable at such time that the Tenant submits written request of early termination to Landlord as described in Section 7 "Notices" of this Lease.

The landlord testified that she placed advertisements on the "rent info" line and on Craigslist. The landlord submitted that they manage many properties in the area and \$3,800.00 is at the "high-end" of the market and there were only two showings. The landlord says properties at this end of the market are not renting out as quickly as those in the \$2,200.00 range. The landlord lowered the asking price to \$3,500.00 on March 26, 2013 and subsequently re-rented the unit for May 1, 2013

The tenant repeated that she had no idea the landlord would claim further rent. The tenant says the landlord accepted their notice and never advised them of this.

The landlord noted the tenancy agreement and says there is a representative in their office responsible for reviewing the agreements with tenants and who explains all of the possibilities to tenants when tenants wish to end their tenancies early such as in this case.

Analysis

The basis for the landlord's claim for the early termination fee is clause 3.0 of the tenancy agreement. This clause is not called a liquidated damages clause, nor does it appear to be a pre-estimate of the losses anticipated in the event of a breach. Rather, it is called a fee and I find that it is designed to be a fee rather than liquidated damages. The *Residential Tenancy Act* sets out what fees may be charged by a landlord. Fees that are not set out in the Act cannot be charged. The Act does not provide for early termination fees. I therefore dismiss the landlord's claim for \$1,900.00.

With respect to the claim for unpaid rent of \$11,400.00 or \$3,800.00 per month for 3 months the landlord is required to show that they made reasonable efforts to mitigate the loss in this regard. The landlord supplied evidence that she ran advertisements on Rentinfo and Craigslist and I find this to be insufficient. In my view this is especially so when one considers the landlord's own evidence that this is a high end property which is difficult to rent. Reasonable efforts to rent a high end property are not the same efforts as would be taken to rent an average property. In such a case I would expect

that the landlord would have taken further steps to attract the type of tenants who might be interested in a high end property such as this.

Conclusion

The landlord's claims are dismissed in their entirety.

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 18, 2013

Residential Tenancy Branch