



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a suite in the landlord's rental property in Vancouver. The tenancy began in August 2010 for a fixed term ending on August 31, 2011. The tenancy has proceeded by successive fixed term renewals thereafter. The latest agreement was for a one year term commencing September 1, 2012 and ending on August 31, 2013. The monthly rent was 2,050.00, payable on the first of each month. The tenants paid a security deposit of \$1,025.00 at the commencement of the first term of the tenancy.

The tenants gave the landlord one month's notice that they intended to move out at the end of October, 2012. The landlord re-rented the unit commencing December 1, 2012 at a monthly rent of \$2,000.00. The landlord has claimed rent from the tenants for the month of November, in the amount of \$2,050.00 and loss of revenue of \$50.00 per month for the remainder of the 10 month term of the tenancy.

The tenant testified that he approached the landlord to end the tenancy before the end of the fixed term. The tenant testified that the landlord agreed to release the tenants from the fixed term tenancy in exchange for the forfeiture of their \$1,025.00 security deposit and payment of a further \$750.00 in cash. The landlord accepted this proposal and he made and signed a notation of the tenancy agreement that said: "All deals are finished 31 Oct. 2012". The landlord also prepared a typed document that he had the

tenant sign. The document said in part: "I, the undersigned (name of tenant) agree for (name of Landlord) to keep our Security Deposit of \$1,025 as liquidated damages for us breaking the signed lease agreement by moving out before the end period of the lease."

The landlord acknowledged that he made the "All deals are finished" notation on the tenancy agreement and that he had the tenant sign the document authorizing him to keep the deposit as liquidated damages. He denied that the tenant paid him \$750.00 in cash. When he was asked why he waited until March 2013 to file his application he said that there was a two year limitation for making a claim and his application was filed within that period.

Analysis

The evidence established that the landlord agreed to accept the tenants' security deposit and a further \$750.00 payment as liquidated damages and to release the tenants from the fixed term tenancy at the end of October, 2012. I accept and prefer the tenant's evidence as to the \$750.00 cash payment over the landlord's denial. Had the payment not been made, the landlord would not have noted that "All deals are finished" on the tenancy agreement. In the landlord's claim for compensation filed almost five months after the tenancy ended, the landlord did not acknowledge that he had accepted the tenants' security deposit as liquidated damages. I find that by accepting a payment of liquidated damages, the landlord ended his right to make a later claim for damages arising out of the tenancy.

Conclusion

The landlord's claim is without merit and it is dismissed without leave to reapply.

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 24, 2013

Residential Tenancy Branch