



Dispute Resolution Services

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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 a monetary order and an order permitting retention of a portion of the security deposit in total satisfaction of the claim. Both parties appeared and had an opportunity to be heard. The tenant had filed some written evidence after the deadline for doing so had passed. The landlord did not consent to the filing of the late evidence. The hearing proceeded and the decision has been rendered without consideration of the late evidence.

Issue(s) to be Decided

- When did the term of this tenancy agreement expire?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced February 1, 2011. The initial agreement was for a one-year fixed term expiring January 31, 2012. The tenant paid a security deposit of \$475.00.

When that agreement expired the tenancy continued as a month-to-month tenancy for the next two months. The parties then entered into a new fixed term tenancy agreement commencing April 1, 2012 and ending March 31, 2013. The agreement included a clause that provided for the payment of liquidated damages in the amount of \$500.00 if the tenant ended the tenancy before the end of the term.

The tenant testified that in February of 2013 he contacted the landlord and advised that he was thinking of moving to a new place. The situation was that he had applied for subsidized housing and thought the process might take a little while so he wanted to extend the tenancy agreement without committing to a new one year term. He testified that he thought they had agreed that the tenancy would continue on a month-to-month basis after the term expired on March 31. He pointed out that on the copy of the tenancy agreement filed by the landlord only the landlord's initials are beside the expiry date which has been changed from March 31 to April 30.

The landlord testified that when the tenant asked for an extension she changed the date on the tenancy agreement and sent a copy of the changed agreement to the tenant.

The tenant said he did receive a copy of the amended agreement but did not recall when.

On March 2 the tenant say a property that was more suitable for his family situation. On March 4, after some conversation with the landlord, he gave the written notice to end tenancy as of March 31, 2013. The letter contained the following sentence: "I further understand that you are willing to waive the 'liquidated damages' fee of \$500.00 (again, provided that you are able to find a suitable tenant prior to the 1st of April)."

The tenant testified that in conversation with the manager she offered to waive the liquidated damages if a new tenant was found by April 1. The manager filed a letter stating that she explained to the tenant that they are the property manager, not the owner, but she would see what she could do. In the end, they offered to reduce the claim for liquidated damages to \$250.00.

The tenant testified that to the best of his knowledge there was one showing of the unit on March 6. The person who looked at the unit was already a resident of the building and had been waiting for a two bedroom corner unit.

The landlord also claimed \$8.00 for key replacement. The tenant did not dispute this claim.

The tenant argues that this is not a liquidated damages clause but a penalty. His argument is based upon the following facts:

- The unit was re-rented with minimal effort by the landlord.
- The landlord's willingness to only claim half the amount specified in the tenancy agreement indicates that it is not a genuine pre-estimate of expenses.

The landlord countered by:

- providing evidence of their usual procedures when re-renting a unit; and,
- stating that reduced claim was a compromised based upon the tenant's particular circumstances.

Analysis

When considering whether the term of this tenancy agreement was extended to April 30 with the knowledge and consent of both parties I look to the detailed letter sent by the tenant to the landlord on March 4. If the tenant was of the understanding that the tenancy agreement had been improperly amended and that the fixed term (and any obligation to pay liquidated damages) expired on March 31, this would have been an

appropriate time to say so. He did not. The logical inference is that the tenant knew and agreed that the term of the tenancy agreement had been extended to April 30.

The law with respect to liquidated damages is summarized in *Residential Tenancy Policy Guideline 4: Liquidated Damages*. The *Guideline* sets out a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. None of the tests listed are comparable to this situation. Accordingly, I find that this was a genuine liquidated damages clause. As explained in the *Guideline*, if a liquidated damages clause is determined to be valid, the tenant must pay the stipulated amount even where the actual damages are negligible or non-existent. I award the landlord the full amount claimed for liquidated damages, \$250.00.

I further award the landlord the sum of \$8.00 for key replacement as this was not disputed by the tenant.

Finally, as the landlord was successful on its application it should receive reimbursement from the tenant of the \$50.00 fee it paid to file this application.

Conclusion

I find that the landlord has established a total monetary claim of \$308.00 comprised of liquidated damages in the amount of \$250.00; key replacement in the amount of \$8.00; and the \$50.00 fee paid by the landlord for this application. Pursuant to section 72 I order that the landlord retain this amount from the security deposit in full satisfaction of the claim.

The balance of the security deposit, \$167.00, should be returned to the tenant as soon as possible. A monetary order in that amount is granted to the tenant. If the security deposit is not repaid to the tenant it may be filed in the Provincial Court and enforced as an order of that court.

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: July 08, 2013