



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for compensation for damage or loss under the Act, to retain the security deposit in satisfaction of the debt and to recover the cost of the filing fee from the tenant for this application. The landlord is also seeking compensation for an incentive reduction in rent granted to the tenant contingent upon completion of the fixed-term contract.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for liquidated damages?

Is the landlord entitled to a refund of an incentive bonus given to the tenant, comprised of reduced rent?

Background and Evidence

The tenancy began on September 1, 2012 for a fixed term that was to expire on August 31, 2013. However, the tenancy was ended by the tenant on March 31, 2013. The landlord testified that the monthly rent was \$604.00. A security deposit of \$450.00 and pet damage deposit of \$200.00 were paid.

The landlord submitted into evidence a copy of the tenancy agreement, a copy of a "Rental Incentive Agreement", a copy of a partially completed move-in/move-out condition inspection report, a summary of charges and a copy of the tenant's undated written notice to vacate.

The landlord testified that, pursuant to a term in the tenancy agreement, signed by this tenant, the tenant agreed to pay liquidated damages of \$300.00 to the landlord in the event that the tenant terminates the agreement prior to the expiry of the fixed term.

The landlord testified that, at the end of the tenancy, the tenant had verbally agreed that the landlord could retain \$300.00, for the liquidated damages, from the tenant's \$450.00 security deposit. The landlord testified that they were compelled to file this application as the tenant did not provide written permission allowing the landlord to retain the deposit, as required under the Act.

The landlord testified that the tenant was also granted a move-in incentive discount for signing the one-year lease. The landlord pointed out that these funds, credited to the tenant, were contingent upon completion of the one-year lease period. The landlord's position is that, because the tenant terminated the contract prematurely, the move-in incentive was not earned by the tenant and should therefore be refunded back to the landlord.

The tenant's representative agreed that the \$300.00 liquidated damages should be paid and pointed out that the landlord should have requested the written permission from the tenant.

Analysis -Liquidated Damages

With respect to the landlord's claim for the liquidated damages, I find that this claim relates solely to a term in the tenancy agreement that the landlord seeks to have enforced. Section 58(1) states that a person may make an application for dispute resolution in relation to a dispute about any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - are required or prohibited under the Act, or
 - relate to the tenant's use, occupation or maintenance of the rental unit, or; the use of common areas or services or facilities.

(my emphasis)

I find the term in the agreement imposing liquidated damages in the amount of \$300.00, to be a valid term in the tenancy agreement that was agreed upon by both parties. I find that the amount is based on genuine estimated administrative costs of re-renting. Therefore I find that it does not constitute a penalty. I find that there is no justifiable reason not to enforce this tenancy term and the landlord is therefore entitled to be compensated in the amount of \$300.00 for liquidated damages.

Analysis – Reclaiming the Move-In Incentive

In regard to the landlord's claim for reimbursement of a move-in incentive discount granted to the tenant for signing the one-year lease, I find that this incentive is not based on any provision under the Act.

In fact, I find that the claim is pursuant to a signed agreement between the parties, titled, "*Rental Incentive Agreement*", which states,

"Upon signing a 12 month lease agreement the tenant(s) will receive a monthly rental concession in the amount of \$121.00 for the term of the lease. ...Tenant must be on Auto Debit to receive the incentive, If Auto Debit is cancelled during the term of the lease the incentives will also be cancelled. If in any case the tenant breaks the lease within the specified time, any and all lease incentives agreed upon during the lease term will immediately be due and payable."

(Reproduced as Written)

I find that the landlord seeks enforcement of this contract through the dispute resolution process. However, while an arbitrator has delegated statutory authority, under section 59 of the Act to enforce terms of a tenancy agreement relating to use, occupation or maintenance of the unit, and common areas and services or facilities, an arbitrator does not have authority to determine terms of other kinds of reciprocal contracts to which the parties may choose to commit themselves.

I find that the "*Rental Incentive Agreement*" is not part of a compliant tenancy agreement and constitutes a separate contractual agreement that is not related to provisions of the Act in regard to the use, occupation or maintenance of the rental unit, common areas, services or facilities.

Given the above, I find I lack authority under the Act to interpret or enforce this particular contract.

In any case, even I found that this portion of the application and claim to be within my jurisdiction, I must find that section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if:

- a) the term is not consistent with the Act or Regulations,
- b) the term is unconscionable, or
- c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that there is no provision in the Act or Regulation that would permit a landlord to rescind funds already credited to the tenant, nor to require a tenant to repay a discount, based on meeting certain residency criteria and therefore the term is not consistent with the Act or Regulations. I find that these monetary credits, once gifted to the tenant could never be considered as funds held in trust for the landlord because the Act does not anticipate that the landlord's funds would ever be held in trust by a tenant for a future refund back to the landlord under any circumstances anticipated by the Act. Moreover, the tenant's failure to refund the monetary credit back to the landlord would not validly constitute damages under section 67 of the Act. For the reasons above, I decline to consider the landlord's claim for reimbursement for the incentive discount granted to the tenant during the tenancy.

Based on the evidence before me, I find that the landlord has established a total monetary claim of \$350.00, comprised of \$300.00 liquidated damages and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain \$350.00 from the \$650.00 being held in trust as the security deposit and pet damage deposit, in full satisfaction of the claim, leaving a balance due to the tenant in the amount of \$300.00, which must be refunded to the tenant forthwith.

I hereby grant the tenant a monetary order under section 67 for \$300.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is partially successful in the application and is ordered to retain a portion of the tenant's security deposit and pet damage deposit.

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 11, 2013

Residential Tenancy Branch