



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RICECHILD MANAGEMENT LTD dba BAYVIEW APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 22, 2013 by the Landlord to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be awarded monetary compensation?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; Tenant's notice to end tenancy; acknowledgement letter issued to the Tenant for breaking lease early; letter issued by the Landlord; move-in and move-out condition inspection report form; advertisements; and Canada Post receipts and tracking information.

The parties confirmed they entered into a fixed term tenancy agreement that began on September 15, 2012 and was set to expire on August 31, 2013. Rent was payable on the first of each month in the amount of \$1,300.00 and on September 15, 2012, the Tenants paid \$650.00 as the security deposit. The move-in condition inspection report

form was signed by both parties on September 15, 2012. The move-out condition inspection report form was signed on May 13, 2013, at which time the Landlord regained possession of the unit. The Tenant provided a forwarding address as listed on the condition inspection report form.

The Landlord testified that the Tenants ended their tenancy prior to the end of the fixed term period and therefore they are entitled to recover the \$100.00 "move-in bonus" as provided for in section 44 of the tenancy agreement. He argued that because the repayment agreement was included in the tenancy agreement, which was signed by both parties it, he should be able to collect it through this process. He stated that he did not know which section of the *Residential Tenancy Act* this would fall under.

When I informed the Landlord that move-in bonuses were not covered under the *Residential Tenancy Act* he continued his previous arguments. When I instructed the Landlord to move on he then argued that their bonus is given as a reduction in rent and therefore it should be considered as non-payment of rent which is covered under the *Residential Tenancy Act*. He confirmed that he had no other arguments at this time and moved on to the remainder of his claim.

The Landlord confirmed he was also seeking payment for the \$300.00 liquidated damages which is provided for at #5 of the tenancy agreement. The Landlord argued that although the Tenant found a replacement tenant they still showed the unit and incurred costs in advertising it. He stated they had other units that were vacant at that time so his managers would show all units to prospective tenants.

The manager, Z.V. testified that he could not remember how many times he showed the Tenants' unit but he does remember discussing it with prospective tenants and showed it to one tenant for sure. He said the female Tenant came to him later and told him that she had found someone to rent the unit but he could not remember the exact date.

The manager D.G. testified that he gave priority to showing the Tenants' unit because they knew they had to move and they did not want to suffer additional loss of rent. The Landlord confirmed that they put a priority on this unit so they could mitigate any potential loss. He also confirmed that they were able to re-rent all the units that were vacant that month.

The Tenant testified and argued that the managers were not telling the truth about showing her unit. She stated that no one showed her unit except herself. She was the one who showed the unit to a prospective tenant on May 1, 2013 but Z.V. convinced them to take a cheaper unit. Then she found the new tenant on May 2, 2013, and they followed through with renting the unit. She is certain the new tenant moved in prior to May 15, 2013.

In closing, the Landlord submitted that even though the Tenant found a replacement tenant they still had complete their process of approving the prospective tenant. They had discussions with the new tenant about signing a lease and not allowing pets; then

the prospective tenant had to complete an application form; the manager Z.V. had to check out the references while their head office staff conducted the credit check. Once the prospective tenant was approved they had to meet with him to complete and sign the tenancy agreement and condition inspection before allowing them to move in.

The Tenant added that after she introduced the prospective tenant to Z.V. he offered for her to sublease the unit and have this person as her tenant until the end of her fixed term. She said she refused to sublease the unit because she wanted to have a clean break from this rental unit with no further responsibility.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Landlord claims \$100.00 for reimbursement of a move-in allowance as per section 44 of the tenancy agreement which states: "*Tenant(s) agree that move-in bonus will be reversed when breaking lease. Tenants will take second month rent \$100 less.*"

The *Residential Tenancy Act* does not define the term "move-in bonus". Without a formal test for defining a move-in bonus in relation to a tenancy agreement, I proceed to consider the interpretation under a reasonable person standard and determined the following:

A move-in bonus is a financial award, often issued in one or two lump sum payments, offered by a landlord to a prospective tenant and commonly known as a signing bonus. The bonus is a predetermined amount used as an incentive to encourage a tenant to sign a lease and is often received or seen as a deduction from the first or second month's rent payment.

Such bonuses are not provided for under the *Residential Tenancy Act*.

Notwithstanding the Landlord's arguments the move-in bonus should be considered unpaid rent; I find the Landlord's claim pertains to a move-in or signing bonus as

defined above. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of the *Residential Tenancy Act*. Accordingly, I find that the Landlord may not claim recovery of a move-in bonus as it is not denominated, or named, by the *Residential Tenancy Act*. Therefore, this claim is dismissed, without leave to reapply.

Residential Tenancy Policy Guideline # 4 provides that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the anticipated loss, such as administrative costs, at the time the contract is entered into.

The Landlord has requested \$300.00 compensation for liquidated damages as provided for in #5 of the tenancy agreement. Notwithstanding the Tenant's argument that she advertised the unit and found the new tenant, I accept the Landlord's submission that they still had to have staff complete administrative functions such as reference checks, credit checks, condition inspection, and completion of applications and tenancy agreement; before the new tenant was accepted, the cost of which is to be covered by the liquidated damages. Accordingly, I approve the Landlord's claim for liquidated damages in the amount of **\$300.00**.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Liquidated damages	\$300.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$350.00
LESS: Security Deposit \$650.00 + Interest 0.00	<u>- 650.00</u>
Offset amount due to the TENANTS	<u>(\$300.00)</u>

The Landlord is hereby ordered to return the \$300.00 remaining balance of the security deposit to the Tenants at the address provided during this proceeding, and as listed on the front page of this decision.

Conclusion

The Tenants have been issued a Monetary Order in the amount of **\$300.00**. In the event that the Landlord does not comply with my Order to return the balance of the security deposit this Order may be served upon the Landlord.

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: August 23, 2013

Residential Tenancy Branch

