



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAMARGUE INVESTMENTS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNR, MNDC, MNSD , FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord to retain the security deposit and a monetary order for rent owed for the first month of the tenancy, and liquidated damages due to the tenant ending the tenancy without proper notice under the Act.

Despite being personally served by on July 12, 2013, the respondent did not appear and the hearing proceeded in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to compensation for rent and liquidated damages?

Is the landlord entitled to the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord testified that a fixed term tenancy agreement was signed on June 13, 2013 for a tenancy that was scheduled to start on June 1, 2013 and expire on January 1, 2014. The rent was set at \$780.00. A security deposit of \$390.00 was paid by the tenant. The landlord submitted into evidence a copy of the tenancy agreement.

The landlord stated that, after the agreement was signed, the tenant later advised the landlord that the tenant had made arrangements to move into another rental unit on July 15, 2013 and therefore would not be paying rent for July or fulfilling the tenancy agreement terms.

The landlord testified that the tenant is in arrears for the rent for July 2013 in the amount of \$780.00, which is being claimed. The landlord testified that there is also a liquidated damages term in the tenancy agreement which provides that:

"5. LIQUIDATED DAMAGES. If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of the Agreement that

causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$390.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit."

The landlord's position is that the tenant did not pay the \$780.00 rent for the month of July, due on July 1, 2013, nor did the tenant give proper notice to end the tenancy to allow the landlord to avoid a loss of revenue by re-renting the unit to for July 2013.

The landlord testified that the tenant, therefore, still owes \$780.00 rent for the month of July 2013. In addition, the landlord feels entitled to liquidated damages in the amount of \$390.00. The total claim is \$1,170.00 plus the \$50.00 cost of filing the application.

Analysis

I find that section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

I find that section 6 of the Act provides that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and either a landlord or a tenant may make an application for dispute resolution if they cannot resolve a dispute relating to the Act or the Agreement.

In this instance I find that the parties entered into a written tenancy agreement which stated that the tenant would pay \$780.00 on the first day of each month.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

In this instance, I find that I find the tenant did not pay rent that was due on July 1, 2013.

I find that a tenant is at liberty to terminate a tenancy but must do so in compliance with the Act or liability may follow. Section 45 of the Act gives the tenant a right to end a periodic month-to-month tenancy by giving the landlord written notice effective on a date that: (a) is not earlier than one month after the date the landlord receives the notice, and, (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

However, a fixed term tenancy cannot be validly ended by a tenant until the expiry date of the contract, or the tenant will incur liability for any losses that result from the

premature termination of the contract. In this instance, I find that the earliest day that the tenant could have ended this tenancy, in compliance with the fixed-term agreement, would be January 1, 2014. Therefore, I find that the tenant did not properly terminate the tenancy in compliance with the Act or agreement.

I find that, according to the tenancy agreement, if the tenant ends the agreement prior to the fixed term, the tenant would be obligated to pay liquidated damages of \$390.00

Section 7 of the Act states that, if a landlord or a tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act gives the arbitrator the authority to determine the damages and issue a monetary order against the party who violated the Act or agreement resulting in the costs or losses.

The landlord has claimed rental arrears of \$780.00 and liquidated damages of \$390.00 and I find that the tenant is liable for these amounts under the Act and agreement

Based on the evidence and testimony, I find that the landlord is entitled to the requested monetary claim of \$1,220.00, comprised of \$780.00 for rental arrears, \$390.00 in liquidated damages and the \$50.00 fee paid by the landlord for this application.

Accordingly I order that the landlord retain the tenant's security deposit of \$390.00 in partial satisfaction of the claim leaving a balance due of \$830.00.

I hereby grant the Landlord a monetary order under section 67 for \$830.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is successful in the application and is granted a Monetary Order for rental arrears and liquidated damages and an order to retain the tenant's security 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: October 25, 2013

Residential Tenancy Branch

