



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL RES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and a monetary order for unpaid rent, NSF charges, liquidated damages and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Since the tenant moved out on November 01, 2013, the landlord withdrew his application for an order of possession. Therefore, this hearing only dealt with the landlord's monetary claim for unpaid rent, NSF charges, liquidated damages and the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, NSF charges, liquidated damages and filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on October 01, 2013 for a fixed term of one year. The monthly rent was \$3,600.00. Prior to moving in the tenant paid a security deposit of \$1,800.00. A clause in the tenancy agreement states that the tenant must pay a fee of \$25.00 for rent cheques that were returned for insufficient funds. The tenancy agreement also contains a clause regarding the payment of liquidated damages in the event the tenant ends the tenancy prior to the end date of the fixed term.

The tenant testified that he moved in on October 01, 2013 and did not pay rent for October after his rent cheque was returned for insufficient funds. The tenant stated that on or about October 15, he informed the landlord that he would be moving out and made several attempts to find a tenant to take over the fixed term lease.

A new tenant made application for November 15, 2013, but failed to follow through. The tenant moved out on November 01, 2013. The rental unit was re rented on December 01, 2013.

The landlord is claiming rent for both months of October (\$3,600.00) and November (\$3,600.00), NSF charge (\$25.00), liquidated damages (\$1,890.00) and the filing fee (\$100.00) for a total of \$9,215.00.

Analysis

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, on or about October 15, 2013 the tenant gave the landlord notice to end the tenancy and moved out on November 01, 2013. The tenant agreed that he did not pay rent for October. By giving notice on October 15, 2013, the earliest the tenant could end the tenancy was November 30, 2013. Therefore the tenant is also responsible for rent for the month of November. Since the rental unit was re rented on December 01, 2013, the tenant is not responsible for rent after November 30, 2013.

Section 4 of the *Residential Tenancy Policy Guideline* deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages.

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 loss at the time the contract is entered into.

In this case, I find the clause did not contain a dollar amount that was agreed upon and therefore I find the clause to be invalid. Accordingly I dismiss the landlord's claim of \$1,890.00 for liquidated damages.

I further find that the landlord is entitled to the NSF charges of \$25.00 and since the landlord has proven most of his case, I award him the filing fee of \$100.00.

Over all, the landlord has established a claim for a total of \$7,325.00 which consists of rent for October and November (\$7,200.00), NSF charges (\$25.00) and the filing fee (\$100.00).

I order that the landlord retain the security deposit of \$1,800.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$5,525.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$5,525.00**.

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: December 11, 2013

Residential Tenancy Branch

