



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 to retain the security deposit in partial satisfaction of the claim. Both the landlord and the tenant participated in the conference call hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on January 15, 2013 as a fixed-term tenancy to end January 31, 2014. In the addendum to the tenancy agreement, one clause indicates as follows: "Should the tenant terminate a one year lease agreement the tenant agrees to pay all advertising costs associated with re-renting the suite as well as a lease break fee equivalent to ½ months rent." At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$547.50. On August 1, 2013 the tenant served the landlord with written notice of his intention to vacate the rental unit as of August 31, 2013. The notice also contained the tenant's forwarding address. The tenancy ended on August 31, 2013.

The landlord claimed \$547.50, equivalent to half a month's rent, pursuant to the cause in the addendum.

The tenant submitted that the clause in the addendum should be non-enforceable, as it is not a liquidated damages amount that is a genuine pre-estimate of the cost of re-renting; rather, it is a “lease break fee.”

Analysis

Upon consideration of the evidence, I find that the landlord’s claim fails. The clause in the addendum is not a genuine pre-estimate of the cost of re-renting, as advertising costs are to be added to the “lease break fee” amount, which is clearly intended as a penalty.

As the landlord’s claim was not successful, he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The landlord’s claim is dismissed.

The landlord must return the security deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$547.50. This order may be filed in the Small Claims 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: January 13, 2014

Residential Tenancy Branch

