



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Key Marketing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

By way of a Decision dated October 22, 2013, the matter of the security deposit for the dispute address was dealt with and an order for the return of double the security deposit was provided to the Tenant. Section 77 of the Act provides that a decision is final and binding on the parties. Given the previous decision in relation to the security deposit, I find that the Landlord may not again make a claim for its retention and I dismiss this claim.

The Landlord confirmed that an order of possession was not being sought and that this claim was made in error. The Landlord withdraws this claim.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord signed a tenancy agreement with Tenant SH and Tenant MB. This tenancy started on November 1, 2012 for a fixed term ending October 31, 2013. Rent of \$1,700.00 was payable monthly. On June 8, 2013 this tenancy ended after notice from Tenant SH. Tenant MB remained in the unit until December 31, 2014 and although a written tenancy agreement was not signed, the Landlord states that Tenant MB remained in the unit as the sole tenant under the same terms, including the fixed term end date, as contained in the original tenancy agreement between the Parties.

The Landlord states that the tenancy agreement provides for the payment of \$1,275.00 plus HST as a re-rental fee if the tenants end the tenancy before the fixed term date.

The Landlord states that the amount set out in the tenancy agreement is based on the actual costs to the owner for finding a new tenant but that this cost was not incurred by the Landlord to re-rent the unit in June 2013 as Tenant MB agreed to remain in the unit and continued to pay the rent until this tenancy ended on December 31, 2013. The Landlord states however that the Landlord's time was spent at the end of the original tenancy arranging for the move-out inspection and to deal with the past arbitration.

The Tenant states that she is not responsible for the re-rental fee as the Landlord did nothing to re-rent the unit and did not lose any rental income. The Tenant states that the Landlord did not carry out an inspection of the unit and therefore spent no time on this task. The Tenant further states that she was not aware of the re-rental clause in the tenancy agreement until this application was made and that this clause was not pointed out to the Tenants at the time of signing. The Landlord states that this clause was pointed out to the Tenants and that although the clause was not initialled, the page was initialled and the amount contained in the clause was bolded in print.

Analysis

A principle of contract law provides that a sum stipulated as payment on a breach of a term of the contract, may, if regarded as too high, be called a penalty. Penalties are not recoverable. Although the Landlord argues that his time to attend the arbitration is a part of the re-rental costs, I find that this time was not spent in relation to re-renting the unit and is therefore not a re-rental cost. Given that the early end of the tenancy did not cause the Landlord any re-rental fees and considering that the Landlord has an immediate tenant to take over the remainder of the lease and therefore did not have to carry out any or minimal actions to obtain a new tenant, I find that the amount provided for by the tenancy agreement is an excessive amount in the circumstances and that it amounts to a penalty that is not recoverable. I therefore dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

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: February 27, 2014

Residential Tenancy Branch

