



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for liquidated damages under the tenancy agreement and to retain this amount from the security deposit in satisfaction of the claim.

Despite being served by registered mail sent on November 15, 2013, supported by Canada Post tracking slips in evidence, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act*?

Background and Evidence

The landlord testified that the fixed-term tenancy began on October 1, 2013 and was to expire six months later. The rent was \$925.00 per month and a security deposit of \$462.50 was paid. The tenant ended the tenancy on October 31, 2013. The landlord submitted into evidence a copy of the tenancy agreement, the rental application and the condition inspection reports. Some of the documents were virtually unreadable.

However, the landlord testified that the original copy of the agreement signed by the tenant was readable and the terms of the tenancy were also explained to the tenant, including the liquidated damages clause. The landlord had also submitted a clear copy of a blank tenancy agreement that was easily read.

The tenancy agreement indicated the tenant agreed to be responsible to pay liquidated damages of \$350.00 if the tenant terminated the contract prior to the expiry date.

The landlord testified that the tenant also moved out without giving the landlord any notice, but they managed to re-rent the unit and did not suffer a loss of rent.

The total amount sought by the landlord was \$350.00 liquidated damages plus the \$50.00 cost of filing.

Analysis

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) rights and obligations under the terms of a tenancy agreement. (My emphasis)

In this instance, I find the landlord is seeking to have a term of the tenancy agreement enforced that requires a tenant to pay the landlord \$350.00 in liquidated damages if the tenant fails to remain in the tenancy until the expiry date agreed to under contract.

Based on the testimony and evidence I find that the tenant did end the tenancy prematurely and therefore the landlord is entitled to \$350.00 in liquidated damages.

I order that the landlord retain \$400.00 in total from the tenant's security deposit in full satisfaction of the claim, comprised of \$350.00 liquidated damages and the \$50.00 cost of the application. This leaves a remainder of \$62.50 still to be refunded to the tenant. I hereby grant the tenant a monetary order in the amount of \$62.50. This order must be served on the tenant and may be enforced in small claims court if necessary.

Conclusion

The landlord is successful in the application and is ordered to retain a portion of the tenant's security deposit for liquidated damages. The tenant is granted a Monetary Order as a refund of the remaining 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: February 25, 2014

Residential Tenancy Branch

