



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Codes: MNR, MNSD, OPR, FF

Introduction:

This was an application by the landlord for an Order for Possession, a Monetary Order and an Order to retain the security deposit in partial satisfaction of the monetary claim. Only the landlord attended the application.

Issues:

Is the landlord entitled to an Order for Possession and Monetary Order?

Background and Evidence:

At the outset the landlord's agent testified that the landlord discovered that the tenant had vacated the unit sometime during the first two weeks of April and accordingly the landlord was no longer requesting an Order for possession. The landlord's agent testified that the one year fixed term tenancy began on December 1, 2013 with rent in the amount of \$ 1,900.00 due in advance on the first day of each month. The tenant paid a security deposit of \$ 950.00 on November 23, 2013. The landlord's agent testified that he sent the dispute resolution package by registered mail to the tenant on March 27, 2014. The landlord's agent testified that the arrears from March through April 2014 were \$ 3,736.66.

Additionally the landlord claimed that the tenant had received a "move in bonus" or "rent incentive" in the amount of \$ 1,000.00 at the beginning of the tenancy and as the tenant was in breach of the tenancy agreement the landlord is now requesting recovery of that amount pursuant to its claw back provision.

The "rent incentive" claw back is contained in the Application for Rent which provides as follows:

In the event that the Applicant does not fulfil the terms of the tenancy agreement and as otherwise specifically provided herein including where the Applicant fails to pay rent when due thereunder, the rent incentives indicated hereunder will be revoked and payable immediately As (sic) governed by the applicable Provincial legislation in which the Rental Premises resides.

Analysis:

Based on the evidence of the landlord I find that the tenant was deemed to have been personally served with the application for Dispute Resolution on April 1, 2014 by registered mail.

The rent incentive or move in bonus claw back provision is not contained in the tenancy agreement. It was only contained in the application for tenancy which is merely an offer made by the tenant to rent the unit. It is an offer drafted by the landlord entirely for its benefit, typically to check the references and credit of a prospective tenant. Upon acceptance of the offer to rent, the parties entered into a separate tenancy agreement. That agreement is silent regarding any rent incentives or claw backs. Accordingly I find that once the tenancy was formed and a new agreement made, the rental application ceases to have any legal consequence and therefore any clauses contained therein including the rent incentive claw back are unenforceable.

In the alternative pursuant to the common law of penalty clauses, I find that the rent incentive claw back is a penalty clause and therefore void and unenforceable pursuant to section 5 of the Act.

I find that the landlord has established a claim for unpaid rent totalling \$ 3,736.66. In this application the landlord only claimed the sum of \$ 3,050.00 therefore I allow only that amount inclusive of the filing fee.

Conclusion:

I order that the landlord retain the deposit and interest of \$ 950.00 and I grant the landlord an order under section 67 for the balance due of **\$ 2,100.00** inclusive of the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the tenant as soon as possible. I have dismissed all other claims.

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: May 06, 2014

Residential Tenancy Branch

