



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Colliers Macaulay Nicolls Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND 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. Two agents for the landlord and both of the tenants participated in the teleconference hearing.

At the outset of the hearing, the tenants confirmed that they had received the landlord's application and evidence, and the tenants did not submit any evidence. Both parties were given full opportunity to give testimony and present their 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

On February 26, 2014 the tenants paid the landlord a security deposit of \$750 and signed the tenancy agreement for a fixed-term tenancy to begin on April 1, 2014 and end on March 31, 2015. Rent in the amount of \$1500 was to be payable in advance on the first day of each month. The tenancy agreement contains a clause whereby the tenants would pay the landlord \$750 in liquidated damages if they ended the tenancy before the end of the fixed term. One tenant initialled above this clause.

On March 13, 2014 the tenants informed the landlord in writing that due to health reasons they had to move and would not be able to rent the unit. The tenants provided their forwarding address in writing on that date.

The landlord has claimed \$750 in liquidated damages, as per the tenancy agreement, and \$1500 in lost revenue for April 2014. The landlord stated that they tried their best to re-rent the unit but were unable to re-rent it until May 1, 2014. The landlord did not provide evidence to show when or how they advertised the unit to re-rent.

The tenants stated that they informed the landlord as soon as possible that they had to move. The tenants stated that they first found the ad for the rental unit on Craigslist, and after they gave the landlord notice that they were not moving in, they checked Craigslist and saw that the landlord did not put up another ad until March 27, 2014. The tenants stated that in regard to liquidated damages, in this case the landlord did not incur any cost for re-renting.

Analysis

I find that the landlord has established their claim for liquidated damages. The tenants entered into a fixed-term lease but ended the tenancy before the end of the fixed term. I find that the clause in the tenancy agreement makes it clear that the liquidated damages amount is a genuine pre-estimate of the costs of re-renting, and one of the two tenants initialled the clause, demonstrating the tenant was aware of the liquidated damages clause. I find that the clause is valid. If a liquidated damages clause is found valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

I find that the landlord failed to provide sufficient evidence to establish that when the tenants gave notice the landlord took reasonable steps to mitigate their loss and re-rent the unit as soon as possible. Therefore I find that the landlord is not entitled to lost revenue for April 2014.

As the landlord's application was only partly successful, I find they are not entitled to recovery of their filing fee for the cost of their application.

Conclusion

The landlord is entitled to \$750. I order that the landlord retain the security deposit of \$750 in full satisfaction of this amount.

The remainder of 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: July 17, 2014

Residential Tenancy Branch

