



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 MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord to keep all or part of the security and pet damage deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee from the Tenant for the cost of the Application.

An agent for the Landlord and the Tenant appeared for the hearing. I determined that the Landlord had served the Tenant with a copy of the Application, the Notice of Hearing documents and the Landlord’s written evidence by registered mail in accordance with the Act and the Rules of Procedure.

This case centered on the Landlord’s monetary claim against the Tenant for not taking occupancy of a rental suite after entering into a tenancy agreement. The written evidence of the Landlord included a copy of the tenancy agreement detailing a liquidated damages clause in the amount of \$750.00 and a copy of the Tenant’s e-mail dated March 25, 2014 explaining the reasons why the Tenant could not move into the rental suite.

During the hearing the Landlord’s agent explained that as a result of not honoring the tenancy agreement, they were unable to re-rent out the suite until June, 2014. However, no written evidence was provided in relation to this.

The Landlord’s agent was referred to Section 7(2) of the Act which states that a party making a claim for compensation against the other for non compliance with the tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As a result, the Landlord bears a burden of proof in providing sufficient evidence that in this case, the Landlord took reasonable steps to re-rent out the suite after being provided with notice by the Tenant on March 25, 2014 to have it re-rented for April 15, 2014 which is the date the tenancy was due to start.

However, the Tenant stated that he had made attempts to find renters for the start date of the tenancy but no written evidence was provided to support his testimony. I indicated to the parties that the failure of the Tenant to honor the tenancy and to give sufficient notice that would have enabled the Landlord to re rent the suite for April 15, 2014 would have been highly unlikely, and that the Landlord would be entitled to some compensation.

As a result, the parties indicated that they would be willing to settle this matter through mutual agreement. After some lengthy discussion between the parties, the parties turned their minds to compromise and achieved a resolution of the Landlord's Application through settlement.

Settlement Agreement

Pursuant to Section 63 of the Act, the arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Both parties **agreed** to settle the Landlord's Application in full as follows:

- The Tenant consented to the Landlord keeping the Tenant's security deposit of \$750.00 in lieu of the liquidated damages clause of the written tenancy agreement.
- The Landlord's agent agreed to the Tenant paying \$780.00 for loss of rent.
- This amount is in **full** satisfaction of the Landlords' Application.
- The Tenant agreed to make this payment in person or by registered mail to be received by the Landlord on or before **August 25, 2014** in the form of a **bank draft or money order**.
- The Landlord is issued with a Monetary Order in the amount of **\$780.00** which is enforceable in the Small Claims court **if** the Tenant fails to make payment.
- The Tenant is cautioned to ensure that documentation is retained in relation to the making of the payment.
- This agreement and order is fully binding on the parties.

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: August 07, 2014

Residential Tenancy Branch

