



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced August 1, 2013. The monthly rent of \$1000.00 was due on the first day of the month. The tenant paid a security deposit of \$500.00. A move-in inspection was conducted and a move-in condition inspection report was completed.

There was a written tenancy agreement. The agreement provided that if the tenant ends the fixed term tenancy he must pay liquidated damages in the amount of \$500.00.

On April 17, 2014 the tenant gave notice to end tenancy effective May 31. In his letter he acknowledged responsibility for the June and July rent if the landlord was not able to re-rent the unit and that he would be forfeiting the security deposit because he was leaving before the end of the term of the tenancy.

A move-out inspection was conducted and a move-out condition inspection report completed on May 31, 2014. On the move-out CIR the tenant acknowledged responsibility for the liquidated damages of \$500.00 and June's rent in the amount of \$1000.00. He also authorized the landlord to retain the security deposit in partial satisfaction of the amount owing.

In the hearing the tenant testified that he did sign the letter and the condition inspection report acknowledging his indebtedness and that he would lose his security deposit but afterwards he wondered whether he had agreed to a claim that was not, in fact, legal.

Analysis

A tenant in a fixed term tenancy is responsible for the rent to the end of the term subject to the landlord's legal obligation to take all reasonable measures to re-rent the unit as soon as possible. In this case, the landlord was able to re-rent the unit is just over two weeks.

The law regarding liquidated damages is summarized in *Residential Tenancy Policy Guideline 4: Liquidated Damages*. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

The *Guideline* sets out some tests that may be considered by an arbitrator deciding whether the sum stated is a genuine pre-estimate of the loss at the time the contract was entered into or is penalty. Having considered the landlord's evidence, the evidence I have heard in other decisions on the same topic, and the tests laid out in the *Guideline* I find that this was a valid liquidated damages clause. Accordingly, the tenant is responsible for them.

Conclusion

I find that the landlord has established a total monetary claim of \$990.00 comprised of pro-rated rent for June in the amount of \$440.00, liquidated damages in the amount of \$500.00, and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$490.00. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 27, 2014

Residential Tenancy Branch

