



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

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that the tenant vacated the rental unit on August 1, 2014. The landlord testified that on September 25, 2014 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant by registered mail to the rental unit address. A Canada Post tracking number was provided as evidence of service.

As the tenant vacated on August 1, 2014 I find that these documents are deemed to have been served in accordance with section 89 and 90 of the *Act* effective August 30, 2015; however the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$638.00, as a return of a rental incentive?

Is the landlord entitled to compensation in the sum of \$350.00 liquidated damages?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The 1 year fixed-term tenancy commenced on January 10, 2014; the fixed term was to end on January 31, 2015. Rent for the first month of the tenancy was pro-rated to \$648.00. Rent after that month was \$900.00 per month. A security deposit in the sum of \$450.00 was paid.

A copy of the tenancy agreement was supplied as evidence. Clause 5 of the tenancy agreement required payment of liquidated damages in the sum of \$350.00 as a genuine pre-estimate of the cost to rent the rental unit. As the tenant breached the terms of the tenancy agreement, the landlord has claimed the liquidated damages.

The landlord submitted a copy of the Application for Tenancy, signed by the parties. The application included a statement entitled "Rental Incentives." This section of the application stated the tenant would be required to repay the 1st month's rent paid; which had been given to the tenant as a rent incentive, should the tenant fail to pay rent and not fulfill the terms of the tenancy agreement.

Since the tenant breached the tenancy agreement by ending the tenancy prior to the end of the fixed term, the landlord has claimed compensation in the sum of rent incentive provided in January 2014; \$648.00.

The tenant did not provide a forwarding address. The tenant had agreed to meet at the unit on August 1, 2014, to complete the move-out condition inspection. The tenant did not attend.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of the tenant, who was served with Notice of this hearing, I find that the liquidated damages clause contained in the tenancy agreement is of force and effect. I find that the clause meets the requirement set out in Residential Tenancy Branch policy; as a reflection of a genuine pre-estimate of the cost of re-renting the unit. The tenant breached the Act by giving notice to end the tenancy before the final day of the fixed term and signed, accepting this term. Therefore, I find that the landlord is entitled to compensation in the sum of \$350.00 as liquidated damages.

In relation to the rental incentive, I have considered the tenancy agreement signed by the parties. The term the landlord is relying upon is not contained in the tenancy agreement; but in an application for tenancy. The landlord and tenant signed a contract, setting out the terms of the tenancy. Information contained in a tenancy application does not constitute a term of the tenancy agreement contract signed by the parties. Therefore, I find that the landlord may not rely on a term that was not a part of the tenancy agreement signed by the parties.

Therefore, I find that the claim for repayment of the rental incentive is dismissed.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the sum of \$400.00 in satisfaction of the monetary claim.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenant is entitled to return of the balance of the security deposit; \$50.00.

The landlord has not been given a written forwarding address. Therefore, I find that if the landlord does not receive a written forwarding address within 1 year of August 1, 2014, pursuant to sections 39 and 62(3) of the Act, that the landlord may retain the balance of the deposit.

Conclusion

The landlord is entitled to compensation in the sum of \$350.00, as liquidated damages.

The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord may retain the sum owed, from the security deposit.

The landlord is Ordered to return the balance of the security deposit to the tenant once a written forwarding address is given by the tenant, no later than July 31, 2015.

This decision is final and binding and 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: March 30, 2015

Residential Tenancy Branch

