



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
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 to retain the security deposit in partial satisfaction of the claim. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, the tenant confirmed that he received the landlord's application and evidence. The tenant did not submit any evidence before the hearing. Both parties were given full opportunity to give affirmed 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

The tenancy began on May 15, 2014 as a fixed term tenancy to end on May 31, 2015, with monthly rent of \$1175 payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$587.50. The tenancy agreement contains a clause indicating that if the tenant ended the tenancy before the end of the fixed term, he would be required to pay \$587.50 as liquidated damages. The tenant initialled beside this clause.

The tenant vacated the rental unit on October 1, 2014 and left a note authorizing the landlord to keep the security deposit in full payment of the liquidated damages amount. The tenant also left his forwarding address in writing. On October 3, 2014 the landlord wrote to the tenant, requesting that he make arrangements to do a move-out inspection.

The landlord carried out a move-out inspection on October 6, 2014 but the tenant was not present for the inspection.

The landlord stated that the tenant put a stop payment on his rent payment for October 2014. The landlord stated that there was damage to walls in the rental unit. The landlord stated that they were unable to re-rent the unit until December 15, 2014.

The landlord has claimed compensation as follows:

- 1) \$587.50 for liquidated damages;
- 2) \$1175 for October 2014 rent;
- 3) \$25 for October 2014 late rent fee;
- 4) \$25 for October 2014 NSF fee;
- 5) \$1175 for November 2014 lost revenue;
- 6) \$120 for wall repairs; and
- 7) \$587.50 for December 1 – 14, 2014 lost revenue.

The tenant stated that at the time he entered into the tenancy agreement, he asked the landlord what would happen if he couldn't continue on with the lease, and he was told that he would forfeit his damage deposit. The tenant stated that he looked at ads for the rental unit immediately after he moved out, and the landlord had increased the rent for his unit from \$1175 to \$1250.

The landlord's response to the increase in the advertised rent was that the landlord has the right to raise the rent to market value.

Analysis

I find that the landlord is entitled to the liquidated damages amount. The tenant ended the tenancy before the end of the fixed term and he initialled beside this clause, indicating that he understood and accepted it. I find that the liquidated damages clause is clear and valid.

I find that the landlord is entitled to lost revenue for October 2014, as it would not be reasonable to expect the landlord to re-rent the unit for that month with no advance warning. I also find that the landlord is entitled to \$25 for the late rent fee and \$25 for the NSF fee, as rent was not paid when due on October 1, 2014, and the landlord incurred bank fees when the tenant put a stop payment on the October 2014 rent.

I find that the landlord is not entitled to compensation for wall repairs, as the landlord had the tenant's forwarding address in writing but did not propose any time or date for a move-out inspection, which is the responsibility of the landlord. Further, the landlord did not provide any photographs of damage or invoices or quotes for the cost of the repairs.

I find that the landlord is not entitled to lost revenue for November or December 2014, as they failed to provide sufficient evidence to show that they took reasonable steps to mitigate their loss and re-rent the unit as soon as possible. I accept the evidence of the tenant that the landlord advertised the unit for a higher rent than what he had paid. A landlord can ask for whatever rent they like, but asking for a higher rent rather than a lower rent does not show evidence of attempting to re-rent the unit as soon as possible.

As their claim was partially successful, I find that the landlord is entitled to partial recovery of their filing fee, in the amount of \$25.

As the landlord's application was successful, they are also entitled to recovery of the \$50 filing fee for the cost of this application.

Conclusion

The landlord is entitled to \$1837.50. I order that the landlord retain the security deposit of \$587.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1250. 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: June 4, 2015

Residential Tenancy Branch

