



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain part of the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

The relevant facts are not in dispute. The tenancy began on July 1, 2014 and the tenant paid an \$812.50 security deposit. The tenancy was set to run for a fixed term expiring on March 31, 2015. The tenancy agreement provides in part as follows:

The tenant agrees to pay Liquidated Damages in the amount of \$500.00 and the Advertising Costs to procure a new Tenant, in the event that notice is given to terminate this agreement prior to its expiry date.

On November 20, 2014, the tenant served the landlord with a letter advising that he was ending the tenancy on December 31, 2014 as he believed that the landlord had not dealt with repair issues in a timely fashion.

The landlord seeks an award of \$500.00 for liquidated damages and recovery of the \$50.00 filing fee paid to bring this application.

Analysis

The tenant was contractually bound by the terms of the tenancy agreement to continue paying rent until March 31, 2015 and had also agreed to pay liquidated damages if he ended the tenancy prior to that date. The only circumstances under which a tenant may end a fixed term early without the consent of the landlord is if the landlord is in breach of a material term of the tenancy agreement. When a tenant believes this to be the case, section 45(3) of the Act requires the tenant to first give the landlord written notice that they are in breach of a material term and give them a reasonable opportunity to correct the breach. Only after the landlord has failed to rectify the situation may the tenant end the tenancy prematurely.

I find that the tenant failed to comply with section 45(3) of the Act and therefore was not entitled to end the tenancy prior to the end of the fixed term. I find that he is therefore obligated to pay liquidated damages and I award the landlord \$500.00. I further find that as the landlord has been successful in their claim, they should recover the filing fee and I award them \$50.00 for a total award of \$550.00. I order the landlord to retain this sum from the \$812.50 security deposit and to return the balance of \$262.50 to the tenant forthwith. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will deduct \$550.00 from the security deposit and is ordered to return the balance of \$262.50 to the tenant.

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 29, 2015

Residential Tenancy Branch

