



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order to retain the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirmed that the details of the Landlord's application were sufficient for the Tenant to know that the Landlord was seeking compensation over the amount of the security deposit.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on September 1, 2014 for a fixed term to end August 31, 2015. The Tenant gave a month's notice and ended the tenancy on April 30, 2015. Rent of \$1,350.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$675.00 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection and condition reports were completed by the Landlord. The Tenant provided its forwarding address on the move out report. The tenancy agreement includes a provision for liquidated damages of \$805.33.

The Landlord states that the Landlord's policy is to fully explain the liquidated damages section to tenants when they sign the tenancy agreement. The Landlord states that the Tenant was

aware of the liquidated damages provision and that the Tenant initialled acceptance of this term in the tenancy agreement. The Landlord states that as the Tenant broke the fixed term lease the Landlord is entitled to the liquidated damages amount and claims \$805.33. The Landlord provides a “breakdown” of the amounts that were used to predetermine the liquidated damages. The Landlord clarifies that it limits its claim to \$775.00 which represents the security deposit of \$675.00 and the fob deposit of \$100.00. The Landlord states that the fob was returned at the end of the tenancy.

The Tenant states that although he initialled the liquidated damages he did not really understand what it meant. The Tenant states that the Landlord did not suffer any losses as a result of the tenancy ending earlier than the fixed term as the unit was filled by another tenant immediately. The Tenant states that the Landlord also discouraged the Tenant from advertising for new tenants for the unit. The Tenant states that despite this discouragement the Tenant still advertised the unit. The Tenant questions the Landlord's breakdown of costs to rent the unit and argues that the overall budget for advertising is not related to re-renting the unit and should not be considered as this cost remains constant despite any turnover. The Tenant argues that since the amount does not reflect a genuine pre-estimate of damages the amount is a penalty and therefore not enforceable.

Analysis

“Liquidated damages” is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable as damages for that breach. Residential Tenancy Branch Policy Guideline #4 provides that a liquidated damages amount must be a genuine pre-estimate of 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. Further, 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.

Although the Tenant states that he did not understand the liquidated damages clause, I do not consider this evidence as determinative of the matter. The Tenant initialled this clause and I accept that the consequences of ending the tenancy before the fixed term were well understood by the Tenant.

I accept the Landlord's evidence that the liquidated damages amount is based on a pre-estimate of the landlord's costs to re-rent that includes a general marketing cost. While the allocation of that portion of marketing costs to the determination of liquidated damages amount appears to be arbitrary, there is no evidence that the costs themselves are not genuine costs. As a result and considering that the liquidated damages amount is not excessive in relation to the overall term and rent payable, I find that the Tenant has not shown that the liquidated damages amount is a penalty. Although it is true that the Landlord did not suffer any rental income losses, this is irrelevant and not contingent on to the agreement to pay the liquidated damages upon ending the tenancy early.

Given the above reasons I find that the Landlord has substantiated that the Tenant owes \$875.00 in liquidated damages. As the Landlord has restricted its claim to \$775.00 I find that the claim as been fully satisfied by the Landlord's retention of the security deposit plus zero interest and the fob deposit of **\$775.00**. As the Landlord did not return the fob deposit despite the fob being returned I find that the Landlord acted outside of the Act and without right to retain these monies and is therefore not entitled to recovery of the \$50.00 filing fee.

Conclusion

I order the Landlord to retain the security deposit and interest of \$675 and the fob deposit of \$100.00 in full satisfaction of the claim.

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: October 16, 2015

Residential Tenancy Branch

