



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act) to recover a loss of rent revenue and compensation for damage and loss and inclusive of recovery of the filing fee associated with this application; and, an order to retain the security deposit in partial satisfaction of the monetary claim.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail service in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord testified they also provided all of their evidence to this hearing to the tenant. The landlord provided the tracking number information for the registered mail. The landlord was given full opportunity to be heard, to present relevant evidence and to make relevant submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement? Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence is as follows. This tenancy is subject to a written tenancy

agreement provided into evidence. The tenancy began June 15, 2015 as one year and 20 day fixed term tenancy which ended earlier than the contracted date of June 30, 2016 date on June 26, 2015 – 11 days after the outset of the tenancy when the tenant vacated. Rent in the amount of \$1700.00 was 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 \$850.00 which the landlord retains in trust.

The landlord seeks loss of revenue for the first 9 days of July 2015 in the amount of the pro-rated rent under the agreement: \$493.54. The landlord claims they were able to re-rent the unit for July 10, 2015. They testified they received a verbal notice to vacate from the tenant the day before they vacated and immediately set about to find a new tenant which they were able to secure within 2 weeks.

In addition, the landlord also relies on the Addendum of the tenancy agreement and seeks compensation of \$300.00 pursuant to the Addendum term, which in relevant part states:

If the tenant terminates the tenancy before the end of the original term, the landlord may, at the Landlord's option, treat this tenancy as being at an end. In such event the sum of \$300.00 shall be paid by the tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said premises. – as written.

Analysis

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims on balance of probabilities.

It must further be noted that **Section 7** of the Act provides as follows in respect to claims of compensation of losses or damages.

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term. A landlord's claim for losses of rent is subject to their statutory duty pursuant to Section 7(2) above to do whatever is reasonable to minimize the damage or loss. In this matter I find that in the absence of a notice from the tenant to end the tenancy, in accordance with **Section 45** of the Act, the landlord was not afforded reasonable opportunity to take steps in order to minimize the loss of revenue for the month following the tenant's departure: June 26, 2015. None the less, the landlord was able to re-rent the unit within 2 weeks – which is evidence of the landlord's efforts to minimize ongoing losses for which the tenant could potentially have been liable. As a result, I grant the landlord loss of revenue for July 2015 in the requested amount of **\$493.54**.

A Tenancy Agreement is, effectively, a contract for a tenancy and it is available to the parties to contract or agree as to what will occur in the event that a fixed term agreement is ended early by the tenant. Commonly, fixed term tenancy agreements may include *liquidated damages* clause intended to offset pre-estimated administrative costs for the landlord to re-rent the unit if the tenancy is ended earlier than contracted. If on claim the clause is determined to be a penalty, it will not be enforceable. However, if the landlord's clause is determined to be valid the tenant must pay the stipulated amount in the Agreement. In this matter the landlord's contract clearly stipulates the purpose and the amount of the pre estimate of the liquidated damages if the tenant breaks the lease. I find the landlord's claimed amount for liquidated damages is not extravagant for the stated purpose of the liquidated damages, and as a result, I find the landlord's clause valid. Therefore, I find the tenant is liable to compensate the landlord the liquidated damages amount of **\$300.00**.

As the landlord has been successful in their application they are entitled to recover their filing fee of \$50.00, for a total entitlement of **\$843.54**.

Conclusion

The landlord's application has been granted.

I Order that the landlord may retain \$843.54 from the security deposit of \$850.00 in full satisfaction of their award, and return the balance forthwith. **I grant** the tenant a Monetary Order under Section 67 of the Act for the balance amount of **\$6.46**. Should the landlord return this amount the Order becomes null and of no effect. If necessary, the Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: January 04, 2016

Residential Tenancy Branch

