



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order, an order to recover the filing fee and an order to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlords' testimony is as follows. The tenancy began on September 1, 2014 and ended on July 31, 2015. The tenancy was to be for a fixed term that was to end on August 31, 2015. The tenants were obligated to pay \$1100.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit. The landlord stated that the tenant moved out one month early and "broke" the lease. The landlord stated that the contract was legal and binding and that the landlord was required to re-rent the unit earlier than expected thus increasing administrative costs to do so.

The tenants' testimony is as follows. The tenant stated that the landlord rented the unit for August 1 and didn't lose any income. The tenant stated that the unit was left undamaged and clean. The tenant stated since there was no physical damage to the unit or a loss of income she should be entitled to the return of the deposit and that the liquidated damages clause does not apply.

Analysis

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the 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.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after the tenant's breach. The cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. However, one important reason why a landlord enters into a fixed-term tenancy agreement is to attempt to limit the number of times the landlord must incur the costs of re-renting.

I find it more likely than not that, when a tenant breaches a fixed term tenancy agreement resulting in an early end to the tenancy, the landlord incurs the costs of re-renting earlier than it would have without the breach. This exposes the landlord to extra costs of re-rental. For that reason, I find there is a loss to the landlord associated with the tenant's breach. The next question is whether the \$550.00 amount specified in the tenancy agreement is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$550.00 are to cover administrative costs to list the rental unit online, show the rental unit to potential tenants, and collect and forward applications to the landlord for reference and credit checks. I find that this amount is a genuine pre-estimate of the loss. The tenant breached the fixed term tenancy agreement and specifically initialled beside the liquidated damages provision in the agreement, stating that she is responsible for this cost. Accordingly, I find that the landlord is entitled to \$550.00 for liquidated damages from the tenant.

The landlord is also entitled to the recovery of the \$50.00 filing fee.

Conclusion

The landlord has established a claim for \$600.00. I order that the landlord retain the \$550.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$50.00. 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: January 20, 2016

Residential Tenancy Branch

