



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KILLAM INTERNATIONAL LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, 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. 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 landlord's testimony is as follows. The tenancy began on March 1, 2014 and was for a fixed term of one year. The parties both agreed to sign another one year fixed term on March 1, 2015 that would expire on February 29, 2016. The tenants were obligateded to pay \$1830.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$892.50 security deposit. The landlord stated that the tenant gave written notice on June 14, 2015 that she would be terminating the lease as of August 1, 2015 due to personal circumstances. The landlord stated that despite aggressively advertising and showing the unit numerous times, she was unable to secure a new tenant for August 1, 2015. The landlord stated that she re-rented the unit for September 1, 2015. The landlord stated that she is seeking the loss of revenue for August \$1830.00 + \$1000.00 liquidated damages along with the \$50.00 fee to file this application for a total claim of \$2880.00.

The tenant gave the following testimony. The tenant stated that she had to move as she was going through a divorce at the time and could not afford the rent any longer. The tenant stated that the landlord did not take immediate steps to rent the unit and that they had ample time to find a renter. The tenant stated that the landlord is overly picky about who she rents to. The tenant stated that its “unreasonable for me to pay this even though I signed the extension”. The tenant stated that she left the unit in excellent condition and that the landlord should return her deposit.

Analysis

I address the landlords’ claims and my findings as follows.

1. Loss of Revenue August \$1830.00.

I find that the landlord and tenant entered into a fixed term tenancy for the period from March 1, 2015 to February 29, 2016.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on August 1, 2015, before the completion of the fixed term on February 29, 2016. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant’s failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant’s non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement a few days later. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, and that the landlord had numerous showings where potential tenants just didn't find the unit suitable. The landlord noted that the property was rented as of September 1, 2015. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks one month of rental loss for August 2015, the period during which the property could not be re-rented due to the tenant's breach. The liquidated damages clause of the tenancy agreement addendum states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenant. Accordingly, I find that the landlord is entitled to \$1830.00 for a loss of August 2015 rent from the tenant.

2. Liquidated Damages - \$1000.00.

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 \$1000.00 amount specified in the tenancy agreement addendum is a genuine pre-estimate of that loss.

The landlord stated that the liquidated damages of \$1000.00 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 addendum, stating that he is responsible for this cost. The tenant confirmed in an email to the landlord that he was agreeable to \$1000.00 being applied towards liquidated damages. Accordingly, I find that the landlord is entitled to \$1000.00 for liquidated damages from the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for the application.

Conclusion

The landlord has established a claim for \$2880.00. I order that the landlord retain the \$892.50 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1987.50. 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: March 08, 2016

Residential Tenancy Branch

