



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR GP INC (GENERAL PARTNER FOR NPR LIMITED PARTNERSHIP)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mndc, mnrc, mndc, ff

Introduction:

The landlord applies for a monetary award from the tenant, related to losses as a result of the early ending of a fixed term tenancy agreement, and also seeks to retain the tenant's security deposit and pet damage deposit.

The tenant did not attend the hearing. The landlord's representative confirmed that the tenant had been served by registered mail to the address he provided as his new forwarding address. I accept that such service satisfies the requirements of sections 89 and 90 of the Residential Tenancy Act.

Issues to be decided:

Is the landlord entitled to compensation from the tenant?

Is the landlord entitled to retain the deposit(s)?

Background and Evidence:

The parties entered into a one year, fixed term tenancy agreement for the subject premises, to begin July 1, 2015 and end June 30, 2016. Monthly rent was \$950.00. A security deposit was paid in the sum of \$437.50, and a pet damage deposit in the same amount was also paid. The tenancy agreement included a liquidated damages clause, to the effect that if the tenant prematurely ended the tenancy, the tenant would pay the landlord the sum of \$950.00 as liquidated damages. The tenant notified the landlord he would be leaving March 15, 2016, and in his notice confirmed his responsibility to do a move-out inspection with the landlord. The tenant abandoned the premises March 8, 2016, and failed to participate in the required move-out inspection. No rent was paid for March, or for any subsequent month. The landlord has incurred expense and time in advertising for new tenants in several different publication venues, and has shown the unit several times to prospective tenants, but the premises remain unrented. The landlord testified that the economy in Dawson Creek is very poor at present and there is a high vacancy rate. The landlord has numerous rental suites that are empty. The landlord sees little prospect of this unit being rented prior to July, even though the landlord is offering incentives and has lowered the rent being asked.

The landlord now seeks liquidated damages from the tenant, as agreed to in the lease, although the landlord waives a claim for any amount beyond \$475.00. The landlord also seeks to recover their rental loss incurred to date, and over the course of the fixed term.

Analysis:

The liquidated damages clause in the lease agreement is an enforceable provision. It is fair to conjecture in general terms that if a tenant were to end a fixed term tenancy prematurely, a landlord would expend time and money on posting signage for vacancies, in running an advertisement for an empty unit, in checking references for new tenants, in showing the unit to prospective tenants and in preparing the paper work for the ending of one tenancy and the start of another. In a difficult rental market such as experienced currently in Dawson Creek, a sum of \$950.00 is not an unreasonable or extravagant amount to claim for such costs related to ending the tenancy early, and I do not find the liquid damages provision to be an unconscionable term of the tenancy agreement. I find that this clause was a genuine pre-estimation of the damages, agreed to be paid by the tenant if he terminated the agreement prematurely. I note that the landlord seeks only half this sum (\$475.00). I consider this to be a unilateral election made by the landlord to limit their claim, and honour that election. The sum of \$475.00 is awarded, and the tenant must pay this sum to the landlord.

The landlord has already suffered a loss of rental income for March and April, and has not yet re-rented the premises despite taking reasonable steps to secure a new tenant. I therefore accept the landlord's submissions that they will likely lose rental income for May and June as well. As the tenant's term was fixed until June 30, 2016, and as he prematurely and wrongfully terminated his tenancy prior the end of the fixed term, the tenant is therefore held responsible to pay this full loss of rental income. I award the sum of \$950.00 for the months of March, April, May and June, which totals \$3,800.00.

As the landlord is successful with this claim, I also award the recovery of the landlord's \$100.00 filing fee from the tenant. The total sum awarded is therefore \$4,375.00.

The landlord also applies for an order to retain the security deposit and pet damage deposit. I note that the landlord's claim was filed within 15 days of receipt of the tenant's forwarding address. I also note that pursuant to section 36(1) the tenant's right to both deposits is extinguished as a result of his abandoning the premises, and failing to participate in the move-out inspection with the landlord. Retention of both deposits is appropriate.

Conclusion:

I order pursuant to section 38(2) that the full amount of the security deposit of \$437.50 and the pet damage deposit of \$437.50 be retained by the landlord, in partial satisfaction of the monetary award noted above (which had totaled \$4,375.00). I further order that the remaining balance of the award due to the landlord, equalling \$3,500.00, be paid immediately by the tenant to the landlord.

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: April 12, 2016

Residential Tenancy Branch