



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MND 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. The landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenant first began occupying the rental unit on February 1, 2012, under a one year fixed term tenancy. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$432.50.

At the end of the first fixed term, the tenant and the landlord entered into another fixed term agreement, and continued to enter into subsequent agreements until the last agreement, which began on February 1, 2015 and was scheduled to end on January 31, 2016. Each tenancy agreement contained different information regarding liquidated damages. The 2012 agreement contained no liquidated damages clause. The 2013

agreement contained a clause in the addendum indicating that if the tenant vacated early she would lose her security deposit. The 2014 agreement contained a liquidated damages clause indicating that if the tenant vacated early she would be required to pay a liquidated damages amount of \$865.00. The 2015 agreement contained a liquidated damages clause indicating that if the tenant vacated early she would be required to pay a liquidated damages amount of \$432.50.

On August 31, 2015 the tenant gave the landlord notice that she would be vacating the rental unit on or before September 30, 2015. Tenancy ended on September 29, 2015.

Landlord's Claim

The landlord has claimed \$78.75 for carpet cleaning, and \$432.50 for liquidated damages. The landlord stated that they re-rented the unit for October 1, 2015 but they incurred administrative costs for re-renting the unit.

Tenant's Response

The tenant acknowledged that the landlord was entitled to compensation for the cost of carpet cleaning.

The tenant stated that when she signed the 2015 tenancy agreement she just quickly came in to the landlord's office and signed the new agreement. The tenant stated that the liquidated damages clause was not explained to her, and she thought it was the same as the security deposit.

Analysis

I find that the landlord is entitled to \$78.75 for carpet cleaning, as the tenant acknowledged that amount.

In regard to the liquidated damages amount, I find that the landlord is not entitled to this portion of their claim. A liquidated damages amount must be a genuine pre-estimate of the costs of re-renting, and the tenant must understand it as such when signing the tenancy agreement. I accept the tenant's testimony as credible and undisputed that the landlord did not explain the liquidated damages clause when the tenant signed the 2015 agreement. The situation was likely further confused by different clauses in the previous

agreements and the fact that the amount was the same as the amount of the security deposit. I therefore dismiss this portion of the landlord's claim.

As the landlord's application was mostly unsuccessful, they are not entitled to recovery of the filing fee for the cost of this application.

Conclusion

The landlord is entitled to \$78.75. The tenant is entitled to recovery of the balance of the security deposit. I order that the landlord retain \$78.75 of the security deposit and I grant the tenant an order under section 67 for the balance due of \$353.75. 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: May 9, 2016

Residential Tenancy Branch