



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on November 19, 2015 for a Monetary Order for: damage to the rental unit; for unpaid rent; to keep the Tenant’s security deposit; and, to recover the filing fee from the Tenant.

An agent for the company Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance for the Tenant during the 15 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents to the Tenant’s forwarding address which was provided on the move-out condition inspection report. This was served by registered mail on November 23, 2015. The Landlord provided the Canada Post tracking number into oral evidence which is documented on the front page of this decision.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the Landlord’s Application on November 28, 2015, pursuant to the Act.

At the start of the hearing, the Landlord withdrew her monetary claim for damages and cleaning to the rental unit as she had failed to submit documentary evidence to verify the costs being claimed in the Application. However, the Landlord is at liberty to re-apply for damage to the rental unit.

I also allowed the Landlord to increase her monetary claim for liquidated damages as the Landlord had made a clerical error in this respect based on information she had received from the Residential Tenancy Branch. I did this pursuant to my authority under Section 64(3) (c) of the Act and because the Tenant had signed the tenancy agreement which documented the \$750.00 payable.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to liquidated damages?
- Is the Landlord entitled to keep the Tenant's security and pet damage deposits?

Background and Evidence

The Landlord testified that this tenancy started on August 1, 2015 and was for a fixed term of one year which was due to expire on July 31, 2016. However, the Tenants abandoned the rental suite at some point in late September or early October 2015. Rent under the tenancy agreement was payable by the Tenant in the amount of \$750.00 on the first day of each month. The Tenant paid a \$375.00 security deposit on July 23, 2015 and a \$375.00 pet damage deposit on August 21, 2015, both of which the Landlord still retains. These are referred to collectively as the "Deposits" in this decision.

The Landlord testified that the Tenant took part in the move-out condition inspection of the rental unit on October 6, 2015 at which point the Tenant provided a forwarding address which was documented on that report. The Landlord confirmed that she did not make the Application until November 19, 2015.

The Landlord testified that the Tenant failed to pay full rent for September 2015 leaving an outstanding balance of \$232.50. The Tenant also failed to pay any rent for October 2016 and was bound by the fixed term tenancy agreement until July 2016. As a result, the Landlord claims \$982.50 in unpaid rent from the Tenant.

The Landlord also claims \$750.00 because the Tenant broke the fixed term tenancy and this was the amount documented as liquidated damages the Tenant would be liable for. The Landlord referred to Section 5 of the signed tenancy agreement subtitled "LIQUIDATED DAMAGES". This clause states the following:

"If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end

of any fixed term, the tenant will pay to the landlord the sum of \$750.00 as liquidated damages and not as a penalty for all the costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated”

[Reproduced as written]

As a result, the Landlord now seeks to claim from the Tenant a total of \$1,732.50.

Analysis

I first turn my mind to the Landlord's Application to keep the Tenant's Deposits. The Landlord testified that she received the Tenant's forwarding address on October 6, 2015 and that by this point the tenancy had ended.

Section 38(1) of the Act states that a landlord must return a security deposit or make an application to claim against it within 15 days after receiving a tenant's forwarding address in writing. If the forwarding address is received by the landlord before the tenancy ends then the landlord must act within 15 days after the tenancy ends.

As a result, I find the Landlord would have had until October 21, 2015 to make an Application to keep the Tenant's Deposits or return them to the address provided by the Tenant. However, the Landlord did not make the Application until November 19, 2015, this being outside of the 15 day time limit provided by the Act.

Section 38(6) (b) of the Act states that if the landlord fails to make an application to keep the tenant's security deposit or return the deposit within 15 days, then the landlord must pay double the amount of the deposit to the tenant. Furthermore, Policy Guideline 17 to the Act states that an arbitrator **will** order the return balance of the deposit whether or not the tenant has applied for arbitration for its return. Therefore, the Landlord must pay the Tenant double the Deposits in the amount of \$1,500.00.

I now turn my mind to the Landlord's monetary claim. Fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy without authority under the Act. In this case, I accept the Landlord's evidence that the Tenant broke the fixed term tenancy by abandoning the rental unit well before the end date stipulated on the signed tenancy agreement. Therefore, I find the Landlord is entitled to unpaid rent in the amount claimed of **\$982.50**. In relation to the Landlord's claim for liquidated damages, Policy Guideline 4 to the Act defines liquidated damages as:

“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..."

[Reproduced as written]

The Tenant signed the tenancy agreement which contained a liquidated damages clause, as detailed above. Therefore, I find the Tenant is liable to pay to the Landlord liquidated damages in the amount of **\$750.00** as required by the tenancy agreement.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,782.50** (\$982.50 + \$750.00 + \$50.00).

The Act allows me to set off amounts that I find are payable to the parties. The Tenant is entitled to \$1,500.00 for double the amount of the Deposits, and the Landlord is entitled to \$1,782.50 for unpaid rent and liquidated damages. Therefore, the resulting difference is \$282.50 payable by the Tenant.

The Landlord is issued with a Monetary Order for this amount. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent and ending the fixed term tenancy early. The Landlord is granted a Monetary Order for \$282.50 after offsetting the amounts payable to each party. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 21, 2016

Residential Tenancy Branch