



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR,

Introduction

This is an application brought by the Landlord requesting a Monetary Order for \$3200.00, and requesting recovery of the \$50.00 filing fee.

The applicant testified that the respondent was served with notice of the hearing by registered mail that was mailed on December 17, 2015; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

The applicant's testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

On August 7, 2015 the landlord and tenants signed a tenancy agreement for a tenancy beginning August 15, 2015 with a monthly rent of \$1350.00, due on the first of each month.

The landlord further testified that this was a fixed term tenancy agreement with an expiry date of February 29, 2016.

The landlord further testified that there was an addendum to the tenancy agreement in which the tenant agreed that there would be a \$500.00 liquidated damages fee if the tenancy was broken before the term had been fulfilled.

The landlord testified that on September 1, 2015 he received both an e-mail and a phone call from the tenant stating that he was vacating on that date.

The landlord further testified that, when he requested that the tenant give written notice, the tenant declined to do so, simply stating he has already left.

The landlord further testified that he attempted to deposit the September 2015 rent cheque, however it was not honored by the bank.

The landlord also testified that he attempted to re-rent the unit as soon as possible; however he was unable to find a tenant to rent the unit until November 1, 2015 and he therefore lost the full rental revenue for the months of September 2015, and October 2015.

The applicant is therefore requesting a Monetary Order as follows:

September 2015 lost rental revenue	\$1350.00
October 2015 lost rental revenue	\$1350.00
Liquidated damages	\$500.00
Filing fee	\$50.00
Total	\$3250.00

Analysis

I have reviewed the documents provided by the landlord and combined with the landlords testimony, it is my finding that the tenant did breach a fixed term tenancy agreement, and normally the tenant would be liable for any lost rental revenue resulting from that breach, however the landlord and tenant also signed an addendum to the tenancy agreement that had a liquidated damages clause that states:

“We agree that there shall be a \$500 fee from the tenant for liquidated damages if this tenancy is broken before the term has been fulfilled.”

The definition of liquidated damages is as follows:

The genuine, reasonable, pre-estimate of the damages, agreed upon in advance by the parties to a contract, that will be paid in the event of a breach.

Where such agreement is made and the parties are bound thereby, the result is that, regardless of the amount of actual loss, the defaulting party's liability to pay damages is limited to the amount agreed upon, and the aggrieved party may not recover more than that amount.

Therefore, in this case since the tenant did default on the tenancy agreement, the tenant is liable to pay damages; however as stated in the liquidated damages clause those damages are limited to the agreed-upon amount of \$500.00.

Therefore, I will allow the landlords claim for the \$500.00 liquidated damages; however I dismiss the landlords claim or any further loss resulting from the breach of the tenancy agreement.

Having allowed a portion of the landlord's claim I will allow the claim for recovery of the \$50 filing fee.

Conclusion

Pursuant to section 67 of the Residential Tenancy Act I have issued a Monetary Order in the amount of \$550.00.

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: July 12, 2016

Residential Tenancy Branch