



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnsd, mndc, ff

Introduction

The landlord requests an order of compensation by the tenant for a “re-leasing charge” related to the premature ending by the tenant of a fixed term tenancy agreement. The landlord also seeks an order to retain the tenant’s security deposit in partial satisfaction of the monetary award, as well as recovery of the landlord’s filing fee.

The agent of the landlord and the tenant both attended the hearing.

The agent submitted that the landlord had tendered evidence to the Residential Tenancy Office along with his application for dispute resolution. That evidence is not on file in either digital or documentary format. The agent also noted that she was not in possession of the tenant’s evidence package, which I accept had been properly served by the tenant upon the landlord. The agent was not opposed to me proceeding, and considering the tenant’s evidence in my decision, provided it was disclosed verbally at the hearing. Both parties provided oral testimony as to their respective relevant evidence, and I am able to make my decision based upon that testimony.

Issues to be decided

- Is the landlord entitled to a monetary award as against the tenant for the re-leasing charge?
- Is the landlord entitled to recover his filing fee from the tenant?
- Is the landlord entitled to retain a portion of the tenant’s deposit? If so, what amount must the landlord return to the tenant?

Background and Evidence

The following represents the relevant testimony of the parties:

On February 28, 2016, the parties entered into a 13 month, fixed term tenancy agreement for the subject premises, to begin April 1, 2016 and end April 30, 2017. Monthly rent was to be \$1,395.00. A security deposit of \$697.50 was paid on that date by the tenant. The tenancy agreement required that the tenant also pay a pet damage deposit, but no pet damage deposit was ever paid. The agreement also included a liquidated damages clause to the effect that if the tenant prematurely ended the tenancy, she would pay the landlord the sum of \$1,395.00.

The following day, March 1, 2016, the tenant advised the landlord’s agent she did not intend to proceed with the tenancy. She confirmed this advice in an email to the landlord that same day. That email did not include a forwarding address, and prior addresses provided to the landlord were either incomplete or erroneous, and did not include her correct postal code. The tenant provided the landlord with a correct forwarding address by March 28, 2016.

The landlord's agent found replacement tenants for the unit, who took possession April 1, 2016. No rental loss was incurred by the landlord, but the landlord paid a re-leasing fee of \$527.31, charged to him by his agent to place the new tenants. The charge was calculated as 3% of the total rent payable over the 12 month term of the new tenancy agreement. The agent confirmed payment of this charge had been received from the landlord.

Notwithstanding numerous calls and emails by the tenant, and the receipt by the landlord on March 28, 23016 of the tenant's proper forwarding address, the landlord and/or his agent failed to provide the tenant with a copy of Application for Dispute Resolution in a timely way. She did not receive same until the end of April.

The landlord's agent testified that the landlord had advised her on July 27, 2016 that he had returned a portion of the security deposit to the tenant by mail. She was unaware, however, of the date this was returned, or of the address the deposit balance was mailed to. The tenant denied ever receiving any of her deposit back from the landlord.

Analysis

I find that the tenant entered into a binding tenancy on February 28, 2016, and consideration in the form of the security deposit was paid by the tenant to the landlord, confirming her intention as of that date to be bound by the agreement she signed. That agreement required her to take possession and to pay rent for the 13 month term of the agreement.

Section 7(1) of the Act requires that a tenant who does not comply with a tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case the tenant breached her agreement when she notified the landlord she would not be moving in. The landlord properly mitigated his potential loss of rental income by securing a replacement tenant, but suffered the cost of the re-leasing charge as a result of having to find new tenants. The landlord is entitled to be compensated by the tenant for this loss, and the sum of \$527.31 is awarded to the landlord.

As an aside, I note that the landlord elected to proceed with a claim of his actual loss rather than claim for liquidated damages (of \$1,395.00) and as a result I need not determine whether the liquidated damages sum specified in the agreement was an unconscionable sum, or whether it was an enforceable provision reflecting a genuine pre-estimate of the landlord's costs that would arise upon a breach.

I dismiss in its entirety the landlord's claim to recover his filing fee from the tenant. This is a discretionary award, and I deny this portion of the claim as a result of conduct by the landlord and his agent. Firstly, this sum is denied due to the landlord's failure to provide the tenant to her correct forward address in a timely way, with information such as a copy of his claim, despite repeated requests attempts by the tenant. I consider the landlord to have either been reckless, or wilfully blind in this regard. Secondly, this sum is denied due to the unsubstantiated allegation by his agent at the hearing that the landlord had returned a portion of the security deposit to the tenant. I accept and prefer the tenant's evidence that no portion of the deposit has been received by her.

The landlord seeks an order to retain the security deposit. In this regard I must consider Policy Guideline 17 which requires that I order any balance remaining on a deposit, even though the tenant has not specifically applied for such recovery. In his application, the landlord claimed a total sum of \$627.31, to compensate the landlord for the re-leasing charge and his filing fee, but in my decision is only awarded the sum of \$527.31. This would appear to leave a balance of the deposit of \$170.19 returnable to the tenant. I further note, however, that based upon his full claim of \$627.31, the landlord should already have returned the sum of \$70.19 to the tenant (that is the difference between the amount of the deposit and the amount of the landlord's claim), a sum due no later than 15 days following receipt of the tenant's forward address (which was received March 28, 2016). This sum was never received by the tenant, and as provided in section 38 of the Residential Tenancy Act, the tenant is therefore entitled to recover double this sum from the landlord. This results in a further \$70.19 due to the tenant by the landlord, above and beyond the \$170.19 already found due. To satisfy this doubling aspect, the sum of \$70.19 must be deducted from the landlord's award of \$527.31 leaving a balance owed by the tenant to the landlord of \$457.12.

I therefore order that the landlord may retain the sum of \$457.12 from the tenant's deposit. The landlord must return the deposit balance of \$240.38 to the tenant immediately, and in any event no later than 15 days following receipt of this order by the landlord.

Conclusion

The landlord is awarded his re-leasing cost, a sum less than the amount of the tenant's deposit held by the landlord. The tenant is awarded a doubling of a portion of that deposit. The landlord may retain a portion of the deposit (\$457.12), and is ordered to repay the remaining balance of \$240.38 to the tenant immediately.

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: August 15, 2016

Residential Tenancy Branch