



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a tenant's request for return of the security deposit. The landlord did not appear at the hearing. The tenant submitted that she sent the hearing package to the landlord via registered mail on January 23, 2016. I noted that the landlord had submitted evidence in response to the tenant's application. The tenant stated she did not receive the landlord's response but she acknowledged that she had moved from the service address she had provided on her application. I was satisfied the landlord was served with notification of this proceeding and I continued to hear from the tenant without the landlord present.

Issue(s) to be Decided

Is the tenant entitled to return of the security deposit?

Background and Evidence

The one-year fixed term tenancy started June 1, 2015 and was set to expire May 31, 2016. The tenant paid a security deposit of \$450.00 and was required to pay rent in the amount of \$900.00 on the first day of every month. The tenancy agreement provides for a liquidated damages clause that provides that the landlord may charge the tenant \$450.00, as a pre-estimate of the landlord's costs of re-renting the unit in addition to any other amounts owed by the tenant, if the tenant ends the fixed term early. The tenant ended the tenancy early in December 2015.

On December 21, 2015 the tenant and landlord completed the move-out inspection report. The move-out inspection report indicates a charge of \$450.00 for liquidated damages and the tenant authorized the landlord, in writing, to retain the security deposit in the amount of \$450.00 to satisfy the liquidated damages clause.

The tenant seeks to have the security deposit returned to her. The tenant claims she did not realize she was authorizing the landlord to retain the security deposit when she was signing the move-out inspection report.

The tenant was also of the position that the landlord is not entitled to charge her liquidated damages since the landlord advertised the unit for rent by putting a sign in the front yard and re-rented the unit in one day.

Analysis

In order for the landlord to seek liquidated damages from a tenant, it must be a term of the tenancy agreement. As provided in Residential Tenancy Branch Policy Guideline 4, a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. The policy guideline also provides that if a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. It is important to consider that the cost to re-rent a unit is not limited to advertising costs and may include time to show the unit and screen prospective tenants; additional time to complete the required paperwork for the outgoing tenant and the incoming tenants sooner than expected under a fixed term tenancy; among other things. Upon review of the liquidated damages clause in the tenant's tenancy agreement, I find the amount payable under the clause is not unreasonable and is likely a reasonable pre-estimate. Accordingly, it does not appear to be a penalty. Therefore, I am satisfied the landlord was in position to seek liquidated damages from the tenant, which it did when the move-out inspection report was presented to the tenant on December 21, 2015.

The tenant provided a copy of the condition inspection report prepared and signed by both parties on December 21, 2015. On the second page it indicates that there is a charge of \$450.00 on the line identified as "liquidated damages". Above the tenant's signature is a line types in bold print and capital letters that states: "I agree to the above deductions from my security and/or pet damage deposit." In signing the document, I find that the tenant authorized the landlord to retain the security deposit in writing on December 21, 2015. It is upon every person who signs a document to read and understand the document they are signing. I am unsatisfied that there is a basis to find the tenant's signature should be ignored or interpreted to mean something different since it is clearly written on the document that she is agreeing to the deductions identified on the form. Therefore, I find her authorization to the landlord remains binding upon her.

In light of the above, I find the tenant has authorized the landlord to retain her security deposit in satisfaction of a liquidated damages clause and there is not a basis to set aside that agreement. Therefore, I dismiss the tenant's application.

Conclusion

The tenant's application has been dismissed.

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: September 27, 2016

Residential Tenancy Branch