



Dispute Resolution Services

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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 MNR, MND, MNDC, MNSD, FF

Introduction

On May 13, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; a monetary order for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords agent ('the Landlord') and the Tenant C.H. attended the teleconference hearing. Both parties provided affirmed testimony.

The Landlord testified that Tenant S.T. was served with the Notice of Hearing by Canada Post Registered Mail sent on May 19, 2016. The Landlord testified that the mail was picked up by S.T. on May 25, 2016. The Landlord provided the Registered Mail tracking number as proof of service. I find that the Tenant S.T. was duly served with the Notice of Hearing in accordance with sections 89 and 90 the *Act*.

Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary order for loss of rent?
- Is the Landlord entitled to liquidated damages?
- Is the Landlord entitled to compensation for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 1, 2015, as a one year fixed term tenancy. Rent in the amount of \$1,300.00 was payable on the first of each month. The Tenants paid the Landlord a security deposit of \$650.00.

The Landlord testified that the Tenants broke the fixed term tenancy agreement by, giving notice to end the tenancy before the fixed term end date, and by moving out of the rental unit on April

30, 2016. The Landlord provided a copy of the Tenants notice of intent to vacate dated April 14, 2016.

The Landlord testified that the tenancy agreement has a liquidated damages clause that requires the Tenants to pay \$1,300.00 as liquidated damages for the Landlord's costs of re-renting the rental unit, if the Tenant ends the fixed term tenancy before the end of the term. The Landlord provided a copy of the tenancy agreement and addendum.

The Landlord makes a total monetary claim in the amount of \$3,023.34 as follows:

- Loss of May 2016, rent in the amount of \$1,300.00
- Liquidated damages in the amount of \$1,300.00
- Cleaning costs in the amount of \$120.00
- Floor repair costs in the amount \$185.00
- Costs for materials in the amount of \$18.34
- To recover the cost of the filing fee of \$100.00

The Landlord testified that she needed to complete some repairs on the rental unit after the Tenants moved out. She testified that she rented the unit out to a new Tenant for June 1, 2016.

The Landlord asks to keep the security deposit in the amount of \$650.00 in partial satisfaction of her claim.

The Tenant testified that he signed the tenancy agreement, including the liquidated damages clause. The Tenant testified that other than the Landlord's claim for May 2016, rent, he does not take issue with the Landlord's claims. The Tenant testified that he believes the Landlord could have rented the unit out sooner because there is such a low vacancy rate in the city.

The Landlord and Tenants participated in a move out inspection on May 2, 2016. The Landlord provided a copy of the Condition Inspection Report. The Condition Inspection Report provides the Tenants forwarding address.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Residential Tenancy Policy Guideline 4 states that if a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum, even where the actual damages are negligible or non-existent.

I find that the liquidated damages clause in the tenancy agreement is valid and the Landlord is entitled to claim the liquidated damages amount of \$1,300.00.

The Tenants gave written Notice to end the tenancy earlier than permitted by the tenancy agreement. The Landlord is not required to rent the rental unit for the earlier date. I find that the Landlord rented out the rental unit as soon as was practicable. I find that the Landlord is entitled to claim loss of rent for May 2016, in the amount of \$1300.00.

The Tenant took no issue with the Landlord's claim for cleaning or for damage to the wood floors. I award the Landlord \$120.00 for cleaning costs; \$185.00 for damage to the wood floors; and \$18.34 for the cost of materials.

I find that the Landlord applied for dispute resolution to keep the security deposit within 15 days of receiving the Tenants forwarding address. I order that the Landlord can keep the security deposit in the amount of \$650.00 in partial satisfaction of the Landlord's claim.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with her claims. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$3,023.34 comprised of \$1,300.00 for loss of May 2016 rent; \$1,300.00 for liquidated damages; \$120 for cleaning costs; \$185.00 for damage; \$18.34 for materials; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$650.00 towards the claim of \$3,023.34, I find that the Landlord is entitled to a monetary order in the amount of \$2,373.34. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenants ended the tenancy early. The Landlord has established a monetary claim in the amount of \$3,023.34. I order that the Landlord can keep the security deposit in the amount of \$650.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of \$2,373.34.

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: November 14, 2016

Residential Tenancy Branch