



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC OLC FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on June 12, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves. The Landlord attended the hearing on her own behalf. All parties in attendance provided a solemn affirmation.

The Tenants testified they attempted to serve their Application package on the Landlord by registered mail. However, there were difficulties with service in this manner and the Landlord subsequently contacted the Tenants to obtain the documents in person. The Landlord acknowledged receipt of the Tenants' Application package on September 5, 2016.

The Landlord testified her evidence package was served on the Tenants by registered mail on November 24, 2016, and that tracking information confirmed it was received on November 28, 2016. The Tenants acknowledged receipt on that date.

The parties were in attendance and ready to proceed, and no issues were raised with respect to service or receipt of their documents.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background

The Landlord submitted with her documentary evidence a copy of the written tenancy agreement between the parties. It describes a fixed-term tenancy for the period from May 15, 2015 to May 31, 2016. Rent in the amount of \$2,150.00 per month was due on or before the first day of each month. At the beginning of the tenancy, the Tenants paid security and pet damage deposits totaling \$1,575.00. At the end of the tenancy, the Landlord deducted \$1,050.00 from the deposits in satisfaction of a liquidated damages clause and returned \$525.00 to the Tenants.

The Tenants confirmed they provided the Landlord with notice to end the fixed term tenancy in January 2016. The effective date of the notice was March 31, 2016, although the Tenants testified they vacated the rental unit early on March 13, 2016, having paid rent in full to the end of the month. However, the Tenants testified that on the weekend of March 19, 2016, they visited a neighbour who lives next to the rental property. While visiting with their friend, the Tenants noticed someone moving into the rental property and a conversation ensued. The Tenants stated that the new tenant told them he was pleased to be able to move into the rental unit early and pay half a month's rent. Accordingly, the Tenants submitted that the Landlord has mitigated her losses by securing a new tenant, effective March 16, 2016, and that half of the rent they paid, or \$1,075.00, should be returned to them.

In reply, the Landlord testified that the new tenancy was effective April 1, 2016. Although she allowed the new tenants to move in early, she did not collect rent until April 1, 2016. In support, the Landlord provided a copy of the tenancy agreement with the new tenants, which indicates the new tenancy began on April 1, 2016.

The Tenants also submitted that the liquidated damages clause, which is found at paragraph 5 of the written tenancy agreement, should not apply, and that \$1,050.00 should be returned to them. They testified that they were cooperative in showing the rental property to prospective tenants, and even stored some of the Landlord's belongings during the tenancy.

In reply, the Landlord relied on the liquidated damages clause, which states:

...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 \$1,050.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.

[Reproduced as written.]

In further support, she provided a statement showing that her property management company was paid to deal with securing new tenants for the rental property.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

The Tenants confirmed they terminated the fixed-term tenancy early. Although the effective date of their notice was March 31, 2016, they vacated the rental property on March 13, 2016. Accordingly, I find that the Tenants breached the fixed-term tenancy agreement by ending the tenancy before the expiry of the fixed term.

However, the Tenants claimed the Landlord mitigated her losses by renting the property to the new tenants in mid-March 2016. The Tenants relied on a conversation they had with one of the new tenants. The Landlord testified that while she permitted the new tenants to move their belongings in early, she did not collect rent. Indeed, the written tenancy agreement between the Landlord and the new tenants confirmed the new tenancy did not begin until April 1, 2016. Accordingly, I find there is insufficient evidence before me to conclude the Landlord collected rent from the new tenants for any part of March 2016. This aspect of the Tenants' Application is dismissed.

In addition, the Tenants testified to their belief they are entitled to the return of the \$1,050.00 liquidated damages amount, which was deducted from the security and pet damage deposits by the Landlord at the end of the tenancy. The Landlord relied on the written tenancy agreement.

Residential Tenancy Branch Policy Guideline #4 states the following about liquidated damages clauses:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in an 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, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

...

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. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

[Reproduced as written.]

I find the liquidated damages clause found in paragraph 5 of the tenancy agreement is valid and is not a penalty. The liquidated damages clause was agreed to in advance and is a reasonable amount when compared to monthly rent. Accordingly, I find that the Tenant's claim for the return of this amount is dismissed.

As the Tenants have not been successful, I decline to grant them recovery of the filing fee.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

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: December 07, 2016

Residential Tenancy Branch