



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DM BAUMGUNEL CHIROPRACTIC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlords' Application for Dispute Resolution (the "Application") filed on September 2, 2016 for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and, to recover the filing fee from the Tenant.

Preliminary Issues

The Landlord named on the Application appeared for the hearing and also as appeared as an agent for the company Landlord. The Landlord provided affirmed testimony as well as documentary evidence in advance of the hearing. However, there was no appearance for the Tenant during the 37 minute hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents to the Tenant for this hearing.

The Landlord testified she served the Tenant with a copy of the Application and the Hearing Package to the Tenant's forwarding address provided at the start of the tenancy. This was served by registered mail on September 9, 2016. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. The Canada Post website shows the Tenant signed for and received these documents on September 13, 2016. Therefore, based on the undisputed evidence before me I find the Landlord completed service pursuant to Section 89(1) (c) of the Act.

During the hearing, the Landlord confirmed that she had not provided evidence of the costs being claimed for damages to the rental unit for cleaning and hot tub maintenance. This evidence was not served to the Landlord or to the Residential Tenancy Branch for this file. In the absence of the Tenant, I allowed the Landlord to

withdraw her claim for damages to the rental unit and provided leave to re-apply for these amounts.

Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent for the last month of this tenancy?
- Are the Landlords entitled to liquidated damages?
- Are the Landlords entitled to keep the Tenant's security deposit in partial satisfaction of the Landlords' monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on April 15, 2016 for a fixed term due to expire on August 31, 2016; at the end of this time the tenancy was to end and the Tenant was required to vacate the rental unit.

Rent under the signed tenancy agreement was payable by the Tenant in the amount of \$1,650.00 on the first day of each month. The Tenant paid a security deposit of \$750.00 on March 30, 2016 which the Landlords still retain as no forwarding address has been provided by the Tenant at the time of this hearing.

The Landlord testified that at the end of July 2016 she was informed by the Tenant verbally that the Tenant would be vacating the rental unit shortly because she had lost her job. The Landlord testified that the Tenant abandoned the rental unit shortly after and a move-out condition inspection was completed in the absence of the Tenant on August 2, 2016.

The Landlord testified that the Tenant failed to pay rent for August 2016. Therefore, the Landlord now seek to recover unpaid rent of \$1,650.00 as well as liquidated damages of \$750.00 for the Tenant's breach of the fixed term tenancy. The Landlord referred to the agreement which contains a clause subtitled "LIQUIDATED DAMAGES". This clause states the following:

"If the occupant ends the fixed term...the occupant will pay to the manager the sum of \$750.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the owner's costs of re-renting the property and must be paid in addition to any other amounts owed by the occupant, such as unpaid occupancy fee or for damage to the property."

[Reproduced as written]

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. In addition, fixed term tenancies are designed to strictly prohibit a tenant or landlord from ending the tenancy without authority under the Act.

In this case, I accept the Landlord's evidence that the Tenant broke the fixed term tenancy by abandoning the rental unit on or before August 2016 without paying rent for the last month of the tenancy. Policy Guideline 4 to the Act defines liquidated damages as:

"A clause in a tenancy agreement where the parties agree in 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..."

[Reproduced as written]

The Tenant signed the tenancy agreement which contained a liquidated damages clause as detailed above. Therefore, I find the Tenant is liable to pay to the Landlords liquidated damages in the amount of **\$750.00** as required by the tenancy agreement and **\$1,650.00** in unpaid rent.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenant the **\$100.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the Tenant to the Landlords is **\$2,500.00** (\$750.00 + \$1,650.00 + \$100.00).

As the Landlords already hold \$750.00 in the Tenant's security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlords are issued with a Monetary Order for the remaining amount of **\$1,750.00** (\$2,500.00 - \$750.00).

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlords' copy of this Decision.

Conclusion

The Tenant breached the Act by ending the fixed term tenancy early. Therefore, the Landlords may keep the Tenant's security deposit and are granted a Monetary Order for the remaining balance in the amount of \$1,750.00. The Landlords' Application for damages to the rental unit is dismissed with leave to re-apply.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 02, 2017

Residential Tenancy Branch

