



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord's agents (collectively the "landlord") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants confirmed receipt of the landlord's application for dispute resolution package and confirmed they did not provide any of their own documentary evidence for this hearing.

Preliminary Issue – Amendment

Although the landlord did not specifically apply for a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, I find that the tenants should reasonably have known that the landlord was seeking this order based on the text written in the details box of the application and the documentary evidence provided. In accordance with section 64(3) of the *Act*, I amend the landlord's application to include a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy of the fully furnished unit began on November 1, 2015 on a on a fixed term until October 31, 2016. Rent in the amount of \$3,600.00 was payable on the first of each month. The landlord maintains possession of the tenants' \$1,800.00 security deposit paid at the start of the tenancy.

In a July 19, 2016 email, the tenants advised the landlord that due to employment, the tenants had to leave the unit "at the end of this month." Upon receipt of this email the landlord began showing the rental unit to prospective renters. Once the landlord secured a new tenancy, the landlord requested formal notice from the tenants. In an email dated August 19, 2016 the tenants confirmed they would vacate "by the end of the month." The tenants vacated the rental unit on August 31, 2016.

Landlord Claims

The landlord is seeking compensation in the amount of \$1,800.00, including the following;

Item	Amount
Loss of rental income	\$1,200.00
Cleaning Fee	\$300.00
Re-Rent Fee	\$300.00
Total Monetary Claim	\$1,800.00

The landlord testified that although a new tenancy was secured, it was not effective until September 10, 2016 therefore the landlord seeks to recover loss of rental income in the total amount of \$1,200.00 ($\$3,600.00/30 = \120.00 daily rental rate x 10 days). The landlord also seeks to recover the \$300.00 cleaning fee as agreed upon in the signed tenancy agreement and \$300.00 in liquidated damages to cover costs associated with re-renting the unit.

Tenants Reply

It is the tenants' position that they did not break the lease as the unit was tenanted until such time that a new tenancy was secured. The tenants understood that because a new tenancy was secured, they would receive their security deposit back less the \$300.00 cleaning fee agreed to in the tenancy agreement.

Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on October 31, 2016. Although the tenants contend they did not end the tenancy, I find their email dated August 19, 2016 serves as formal notice to end the tenancy by August 31, 2016. This notice ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the Residential Tenancy Policy Guideline #30 neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties.

Because relocation due to employment does not constitute cause and the parties did not sign a mutual agreement to end tenancy, I find the tenants ended the tenancy contrary to the *Act*. In such circumstances, a landlord may be eligible to monetary compensation for loss of rental income provided the landlord can establish reasonable efforts were made to re-rent the unit. Based on the landlord's testimony and documentary evidence I find that the landlord mitigated its loss by promptly advertising the unit and securing a new tenancy effective September 10, 2016. Therefore I find that the landlord is entitled to \$1,200.00 for loss of rental income.

As the tenants acknowledged responsibility for the cleaning fee, I find the landlord is entitled to recover the \$300.00 cleaning fee.

Because the tenants ended the tenancy contrary to the *Act*, and the parties signed an agreement that included a liquidated damage clause, the tenants may be held liable for an amount not exceeding the amount stipulated in that clause. The amount stipulated and agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be constitute a penalty and not be enforceable. I am satisfied that the liquidated damage clause which indicates a pre-estimate of \$1,800.00 for all costs associated with re-renting the rental unit, does not constitute a penalty and award the \$300.00 sought by the landlord.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,900.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the \$1,800.00 security deposit in partial satisfaction of the monetary award and grant an order for the balance due \$100.00.

Conclusion

Item	Amount
Loss of rental income	\$1,200.00
Cleaning Fee	\$300.00
Re-Rent Fee	\$300.00
Filing Fee	\$100.00
Less Security Deposit	(\$1,800.00)
Total Monetary Order	\$100.00

The landlord is entitled to \$1,900.00. I order the landlord to retain the \$1,800.00 security deposit in partial satisfaction of the monetary award and I grant an order for the balance due \$100.00.

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: March 24, 2017

Residential Tenancy Branch