



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

The tenant applies to recover a \$650.00 security deposit, doubled pursuant to s. 38 fo the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing, the landlord by its authorized representative, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant entitled to recover the deposit money?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The tenancy started November 1, 2015.

The written tenancy agreement shows that the tenancy was for a two year fixed term to October 31, 2017 at a monthly rent of \$1300.00. The tenant paid a \$650.00 security deposit.

The tenant suffered the loss of his wife in early 2016. He no longer required a two bedroom apartment after that. He gave notice to end his tenancy September 30, 2016.

Fortunately, the landlord was able to find a replacement tenant to start October 1 and so did not suffer any loss of rental income.

The tenancy agreement contains a liquidated damages clause in the event of a material breach by the tenant. A tenant purporting to end a tenancy before the end of its fixed term is committing a breach of a material term. The clause states that in the event of such a breach the tenant will pay the landlord \$1300.00 as liquidated damages “for all costs associated with re-

renting the rental unit.” The clause excludes rental loss as being included as liquidated damages.

Liquidated damages are intended to be a reasonable pre-estimate of loss the parties to a contract agree on in the event of one of them breaching the agreement.

The parties conducted a move-out inspection on September 28, 2016 and together signed a move-out condition report. The report contains a “Security/Pet Damage Deposit Statement” in which the tenant agreed to liquidated damages of \$717.80 and authorized the landlord to retain the deposit money.

Analysis

The tenant argues that he does not know what the liquidated damages were for and that the landlord has never given him an explanation.

The landlord’s representative notes that the amount in the report was determined as the equivalent of a half month’s rent the owner had to pay its agent to find and place new tenants, plus the cost of a credit report for prospective tenants.

The time for discussion about the matter was at the move-out inspection. The tenant authorized the landlord to retain the deposit money then and he should properly have determined his rights and obligations before he did so. Having signed off on the deposit on the move-out report and not being under any disability that might suggest he was not able to understand what he was signing, he is bound by that document.

Conclusion

The tenant is not entitled to recover his deposit money. His application must be 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: April 25, 2017

Residential Tenancy Branch