



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASTON HOMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for loss of rent and liquidated damages; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail on December 12, 2016 using the tenant's forwarding address. I was satisfied that the landlord duly served the tenant with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord's agent requested the application be amended to name the landlord that appears on the tenancy agreement. I heard that the application was filed under the former property management company's name. I amended the application accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for loss of rent and liquidated damages as claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy agreement started on May 1, 2016 and was set to expire on April 30, 2017. The tenant paid a security deposit of \$800.00 and was required to pay rent of \$1,600.00 on the first day of every month. The tenancy ended on November 26, 2016 and the tenant provided a forwarding address on the move-out inspection report. The landlord filed this application on December 6, 2016.

The landlord seeks to recover loss of rent for one month in the amount of \$1,600.00 as well as liquidated damages of \$300.00. The landlord's agent testified that the rental unit was advertised for rent but they were not successful in re-renting the unit until April 1, 2017. The landlord testified that the rental market was much slower at that time of year

but the landlord limited its claim to one month of loss of rent. I noted that the tenancy agreement contained a liquidated damages clause that provides for a payment of \$1,600.00. The landlord responded by stating the landlord reduced the amount sought for the benefit of the tenant.

The landlord provided a copy of the tenancy agreement, move-out inspection report, and, registered mail receipt as evidence.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Loss of rent

Where a tenant ends a fixed term tenancy before expiry of the fixed term the tenant may be held responsible to compensate the landlord for loss of rent for the remainder of the fixed term. Based upon the unopposed testimony and evidence before, I accept that the tenant breached the tenancy agreement by ending the tenancy before the expiry of the fixed term and the landlord suffered a loss of rent of \$1,600.00. Therefore, I grant the landlord's request for loss of rent in the amount of \$1,600.00.

Liquidated damages

Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. As for the landlord's claim for liquidated damages, I find the amount of \$300.00 that is requested is reasonable and I do not view it as a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$300.00 from the tenant.

Filing fee, security deposit and Monetary Order

I find the landlord's application has merit and I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Loss of rent	\$1,600.00
Liquidated damages	300.00
Filing fee	100.00
Less: security deposit	<u>(800.00)</u>
Monetary Order	\$1,200.00

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,200.00 to serve and enforce upon the tenant.

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: June 16, 2017

Residential Tenancy Branch