



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Woo Young & Sons Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The agent testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 13, 2017 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for liquidated damages and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 25, 2016 for a 1 year fixed term tenancy beginning on September 1, 2016 for a monthly rent of \$1,050.00 due on the 1st of each month with a security deposit of \$525.00 paid. The agreement contained Clause 5 entitled "Liquidated Damages" in which the tenant agrees to pay the landlord \$500.00 for all costs associated with re-renting the unit should the tenant breach a material term of the agreement that causes

the landlord to end the tenancy or if the tenant ends the tenancy prior to the end of the fixed term;

- A copy of a letter from the tenant dated November 9, 2016 advising the landlord of her intention to end the tenancy effective December 31, 2016; and
- Confirmation of advertising the rental unit to seek new tenants as of December 15, 2016.

The landlord seeks compensation for ½ month's rent for the first 15 days of January 2017 as he was not able to secure new tenants until January 16, 2017. The landlord also seeks liquidated damages as per clause 5 of the tenancy agreement.

Analysis

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As there is no evidence before me that the tenant provided notice that the landlord was in breach of a material term of the tenancy agreement I find the earliest the tenant could have ended the tenancy was August 31, 2017. As the tenancy ended when the tenant vacated the rental unit by December 31, 2017 I find the tenant is responsible for the payment of rent until the end of the fixed term subject only to the landlord's obligation to mitigate losses.

I accept the landlord took reasonable steps to re-rent the unit and as a result of his efforts the rental unit was rented again to new tenants effective January 16, 2017. As a result, I find the landlord is entitled to ½ month's rent in the amount of \$525.00 for lost revenue.

In addition and pursuant to Clause 5 of the Tenancy Agreement I find the tenant is responsible for the payment of liquidated damages for ending the tenancy prior to the end of the fixed term, in the amount claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,125.00** comprised of \$525.00 lost revenue; \$500.00 liquidated damages and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit held in the amount of \$525.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$600.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 29, 2017

Residential Tenancy Branch