



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD RIDGE DEVELOPMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, loss and damages pursuant to section 67; and
- recovery of the filing fees from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was primarily represented by its agent RS (the "landlord"). The tenant RD primarily represented both co-tenants (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution and any evidence. The tenants testified that they were served with the landlord's application package. The tenant said that they had not submitted any written evidence. I find that the landlord's application package was served on the tenant in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed? Is the landlord entitled to recover the filing fee for the application from the tenants?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in August, 2016 and was scheduled to end in August, 2017. The tenant notified the landlord of

their intention to end the tenancy earlier on April 19, 2017 and vacated the rental unit on May 2, 2017. The landlord testified that they were able to get a new renter into the unit beginning May 15, 2017.

The monthly rent for the tenancy was \$1,800.00. A security deposit of \$900.00 was paid at the start of the tenancy. The landlord testified that they incurred cleaning costs at the end of the tenancy in the amount of \$510.78. The landlord said that the tenancy agreement contains a liquidated damage clause that provides that upon an earlier end of tenancy the tenant must pay the equivalent of one month's rent and \$525.00. A copy of the tenancy agreement was not submitted into written evidence.

On May 11, 2017 the tenant gave the landlord written permission to use the security deposit for any rental arrears arising from the tenancy and a cheque in the amount of \$347.50 for damages to the rental unit. The tenant said that he deducted an amount from the landlord's calculation of cleaning costs as he believes it is not a legitimate expense. The tenant said that while he does not dispute that there may be a liquidated damage clause in the tenancy agreement he does not believe that the landlord suffered any loss due to the early breach. The tenant testified that he issued a cheque for the damages that he believes the landlord incurred. The cheque was issued in full satisfaction of the lease and he argued that by cashing the cheque the landlord was estopped from making subsequent claims.

The landlord seeks a monetary award of \$2,488.28 for the cleaning cost and the liquidated damages less the payment made by the tenant. The landlord said that the liquidated damage is the cost of re-renting the unit due to the breach of the fixed term tenancy agreement.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the landlord's claim. While the parties testified that there is a liquidated damage clause contained in the tenancy agreement no copy of the agreement was submitted into written evidence. In the absence of written evidence I am unable to make a determination on the validity of the liquidated damage clause. Furthermore, the landlord did not submit any invoices, receipts or written materials in support of their claim for damages and loss incurred. In the absence of any documents I find that there is insufficient evidence to determine on a balance of probabilities that the landlord suffered a loss as a result of the breach of the agreement. Consequently, I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's application is dismissed with leave to reapply.

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: October 27, 2017

Residential Tenancy Branch