



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, MNDC, OPN, FF

Introduction

In the first application the landlord seeks to recover an amount specified as liquidated damages in the tenancy agreement. In the second application the tenant seeks to recover her security deposit.

Both parties attended the hearing 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

Does the liquidated damages clause in the tenancy agreement apply to this situation?
Is it an enforceable clause?

Background and Evidence

The rental unit is a two bedroom condominium apartment. There is a written tenancy agreement. The tenancy started September 1, 2016 for a one year fixed term at a monthly rent of \$1850.00. The landlord holds a \$925.00 security deposit.

In June 2017 the tenant gave the landlord written notice that she intended to vacate the rental unit on July 31, 2017, a month before the end of the fixed term.

The parties conducted a move out inspection at the end of July and the tenant moved.

Clause 6 of the tenancy agreement provides:

LIQUIDATED DAMAGES. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$1850—as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming further rental revenue losses that will remain unliquidated.

Ms. F. for the landlord testifies that the damages are expected to cover the costs related to securing a new tenant and the cost the landlord charges to the owner; one half a month's rent, whenever a new tenant is placed into the rental unit.

The tenant did not dispute this evidence but says that the rental unit was left clean and in good order. It is agreed that the landlord found a new tenant for immediate occupancy August 1 for at least the same rent if not slightly more.

Analysis

Having considered the evidence and Residential Tenancy Policy Guideline 4, "Liquidated Damages" I find that the amount stated in this tenancy agreement was not an unreasonable amount. It was not a penalty and thereby unenforceable.

The fact that the tenant's breach of the fixed term came late in the tenancy or that the landlord was able to re-rent immediately are not pertinent to whether or not the liquidated damages clause can be enforced. The parties agreed to the term and the amount without reservation for such circumstances.

I must therefore find that the clause is enforceable and that the tenant owes the landlord \$1850.00 under it.

The landlord's representative states that the landlord wishes to simply retain the \$925.00 security deposit it holds, in complete satisfaction of the claim.

Conclusion

The landlord's application is allowed. I authorize it to retain the \$925.00 security deposit in complete satisfaction of its claim.

The tenant's claim for recovery of the deposit money is 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: February 21, 2018

Residential Tenancy Branch