



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to liquidated damages?

Is the Landlord entitled to lost rental income?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are undisputed facts: The tenancy started on February 1, 2017 for a fixed term to end January 31, 2018. On October 10, 2017 the Tenants informed the Landlord that they would be moving out of the unit for October 31, 2017 and did move out on that date. During the tenancy rent of \$850.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit and

\$425.00 as a pet deposit. Section A of the Addendum provides for a breaking lease term as follows:

If the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option treat his Tenancy Agreement as being at an end. In such event, the sum of \$300.00 shall be paid by the Tenant to the landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the said premises. The Landlord and Tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the Landlord from exercising any further right of pursuing another remedy available in law or equity, including, but not limited to, damages to the premises and damages as a result of rental loss due to the Tenant's breach of the terms of this agreement.

The Landlord claims \$300.00 as liquidated damages on the basis that the Tenant ended the tenancy before the end of the fixed term.

The Landlord also claims lost rental income for November 2017 to January 2018 inclusive on the basis that the Tenant ended the tenancy before the end of the fixed term. The Landlord states that the unit was advertised on various online sites for the same rental rate as soon as the Tenants' notice was received and that they filled the unit for February 1, 2018.

The Tenants state that they ended the tenancy initially due to the Landlord's lack of a timely response to flooding and repairs. The Tenants state that they were also at a risk of violence from a client following an incident with that client and the Tenants were concerned that the client may locate the Tenants at their residence. The Tenants state that when they gave their notice to move out of the unit they acknowledged their liability for the liquidated damages but that the Landlord informed them that the owner may not uphold the liquidated damages clause. The Tenants argue that they should not owe any more than the liquidated damages amount.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Nothing in the Act allows a tenant to end a tenancy for a landlord's breach of the Act. Further nothing in the Act allows a tenant to end a fixed term tenancy due to a risk of violence from anyone other than a family member of the tenant. As there is no evidence of anything that allows the Tenant to end the tenancy early on a fixed term tenancy I find that the Tenants could not end the tenancy prior to the end date without consequence.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable as damages for that breach. In this instance although the liquidated damages clause uses the administrative costs of re-renting to describe the amount being quantified, it does not make a difference to the outcome as the liquidated damages amount becomes payable upon the Tenant ending the tenancy early. This amount limits or determines in advance the damages flowing from the early end of the tenancy. While the clause does not stop the Landlord from seeking additional losses, these additional amounts must flow from different breaches of the tenancy agreement such not paying rent while occupying the unit or not leaving the unit clean and undamaged at the end of a tenancy. These amounts are not damages that would flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damage amount.

While the Landlord may have sought to pursue rental income to the end of the fixed term the Landlord and did not intend to honor the liquidated damages clause the Landlord now claims the liquidated damages as well as the loss of rental income. As the Landlord has not provided any evidence of a breach of any other term of the tenancy agreement that led to lost rental income beyond the breach of ending the

tenancy early, as the damages arising from an early end of tenancy have been determined by agreement in advance at \$300.00 as liquidated damages, and as the Landlord has now made a conflicting claim for both liquidated damages and lost rental income, I resolve the conflict in favour of the Tenant, find that the Landlord has only substantiated **\$300.00** for liquidated damages and I dismiss the Landlord's additional claim for lost rental income.

As the Landlord's application has met with limited success and as the Tenants did not dispute the liquidated damages liability prior to the Landlord making this application, I decline to award the Landlord with recovery of the filing fee as the Landlord did not likely have to incur this cost in order to obtain the liquidated damages amount. Deducting **\$300.00** from the combined security and pet deposit plus zero interest of **\$850.00** leaves **\$550.00** to be returned to the Tenants forthwith.

Conclusion

I order that the Landlord retain **\$300.00** from the security deposit and interest of \$850.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$550.00**. If necessary, this order may be filed in the Small Claims Court and 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 20, 2018

Residential Tenancy Branch