



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, two agents for the landlord ("agents") attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Neither party expressed any concerns with documentary evidence. The tenant confirmed that they had received and reviewed the documentary evidence from the landlord prior to the hearing. The tenant also confirmed that they did not submit any documentary evidence in response to the landlord's application. I find the tenant was sufficiently served as a result of the above under the *Act*.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the fixed term tenancy agreement was submitted in evidence. The tenancy was scheduled to begin on August 1, 2017 and was signed on June 22, 2017. The tenant paid a security deposit of \$1,325.00 by cheque which the tenant admitted she cancelled the same date as she signed the fixed term tenancy agreement on June 22, 2017. The tenant claims that she did not like the agents for the landlord or the rental unit due to “ants”.

The landlord has claimed for \$1,325.00 for the cost of liquidated damages in accordance with tenancy agreement addendum section 4 which reads in part:

“4. Tenant Leaves Before the End of Fix Term Tenancy.

If the tenant request leaving before the end of the original terms as set out in ITEM-2 of this Residential Tenancy Agreement, the Tenant shall pay the Landlord's loss in rent if any due to early termination of rental fixed lease. Also the Tenant shall pay \$ (amount equal to half month rent) not as penalty, to cover the agent's rent-up fee of the said premises...”

[Reproduced as written]

The tenant confirmed that after they signed the tenancy agreement and addendum and a security deposit cheque was given to the agents, they called them later that day to ask them not to cash the cheque as she changed her mind about renting the rental unit.

The landlord's submitted an invoice in the amount of \$1,325.00 for the cost to re-rent the rental unit which included advertising of the property for rent, interviewing the renter, performing reference and/or credit checks, and to arrange to meet with the tenant to sign the rental documents.

There is no dispute that the tenant signed the tenancy agreement and addendum and later placed a “stop payment” on the security deposit cheque from the tenant in the amount of \$1,325.00.

Section 2 of the Addendum lists a minimum \$50.00 fee for any late payments or returned payments including “bounced” cheques.

Analysis

Based on the documentary evidence and the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Loss of rent – Section 45(2) of the *Act* applies and states:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[My emphasis added]

In addition, section 16 of the *Act* applies and states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, **whether or not the tenant ever occupies the rental unit.**

[My emphasis added]

Therefore, I find the tenant breached section 45(2) and section 16 of the *Act* by signing a fixed term tenancy agreement and providing a cheque for the security deposit and then changing their mind by placing a stop payment on the security deposit cheque. I find the obligations for both parties started on June 22, 2017 and that the tenant is liable for the cost of liquidated damages in the amount of **\$1,325.00** as claimed as a result. Therefore I find the landlord has met the burden of proof for the cost for liquidated damages.

Regarding item 2, the \$50.00 amount claimed for the returned/bounced cheque related to the tenant placing a stop payment on the security deposit cheque, I find the \$50.00 amount in section 2 of the Addendum to be higher than section 7(1)(d) of the Residential Tenancy Regulation ("regulation") permits. The maximum fee under section 7(1)(d) of the regulation is \$25.00 and as a result, I find the landlord is entitled to the **\$25.00** amount related to the tenant's cheque that was returned due to the tenant placing a stop payment on the security deposit cheque. While the agent stated that the bank charged \$45.00 as the bank fee I do not find that the documentary evidence supports the \$45.00 amount which is why I have limited the amount granted to \$25.00 as indicated above.

As the landlord's application was successful, I also grant the landlord **\$100.00** for the cost of the filing fee pursuant to section 72 of the *Act*.

I find the landlord has established a total monetary claim of **\$1,450.00** comprised of \$1,325.00 for liquidated damages, a \$25.00 fee for the cheque returned due to the stop payment placed on the cheque by the tenant, plus the \$100.00 filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the amount owing by the tenant to the landlord in the amount of **\$1,450.00**.

I caution the tenant not to breach a fixed term tenancy in the future by entering into a contract the obligations of which began on June 22, 2017. The tenant's remedy

regarding any concerns regarding “ants” and her feelings towards the landlord’s agents were not to sign the tenancy agreement which the tenant did not do. Instead, the tenant signed the tenancy agreement and addendum, and gave the agents a security deposit cheque which she later placed a stop payment on.

Conclusion

The landlord’s application is mostly successful.

The landlord has established a total monetary claim of \$1,450.00 as described above. The landlord has been granted a monetary order under section 67 for the amount owing by the tenant to the landlord in the amount of \$1,450.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 6, 2018

Residential Tenancy Branch