



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application made January 12, 2018 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - 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 Tenant 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 the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy, under written agreement, started on May 1, 2017 on a fixed term to end April 30, 2018. Rent of \$2,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit. The tenancy agreement provides for a payment of \$1,050.00 as liquidated damages if the fixed term tenancy is ended early. On November 30, 2017, the Tenants provided notice to end the tenancy for December 31, 2017 and moved out of the unit on December 15, 2018. The Tenants paid the full rent for December 2017. A new tenancy started on January 3, 2018. The Landlord

requested and received payment from the Tenants for the rent for January 1 and 2, 2018. The Landlord received the Tenants' forwarding address on January 12, 2018.

The Landlord states that the pre-estimated costs used to determine the amount of liquidated damages are for advertising, for screening tenants, credit checks, accepting and processing applications and signing leases. The Landlord states that the amount of \$1,050.00 is based on what the property management agency charges the owner and is calculated at half the monthly rent for any unit. The Landlord claims \$1,050.00.

The Tenant states that prior to giving their notice to end the tenancy they investigated the likelihood of obtaining new renters to finish the lease by speaking with other tenants in the building. The Tenant states that without any advertising by the Landlord and shortly after they gave their notice a new tenant was shown the unit by the building manager and this tenant immediately applied for January 2018 occupancy. The Tenant states that the Landlord informed the Tenants by email on December 18, 2017 that the unit was rented for January 3, 2018. The Tenant provides a copy of this email. The Tenant states that there were no advertising costs and that the minimal administrative duties left to obtain a new tenant could not amount to over \$1,000.00. The Tenant argues that the liquidated damages costs are therefore a penalty.

Analysis

"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 costs of re-renting to describe the amount being quantified, it does not make a difference to the outcome as the amount becomes payable upon acts that result in the early end of the tenancy: either the Tenant ends the tenancy early or by another breach causes the Landlord to end the tenancy early. The liquidated damages amount limits or determines in advance the damages flowing from the early end of the fixed term tenancy. The clause further provides that such monies

are due to the landlord and does not preclude the Landlord from exercising any further right to recovering other damages from the Tenant. In order to preserve the legal principle of liquidated damages I consider that “other damages” are those damages that 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.

Rent is no longer payable after a tenant vacates a rental unit. As the Landlord collected monies for January 1 and 2, 2018 and as the Tenants were not residing in the unit on these dates I find that the Landlord collected lost rental income from the Tenants for these dates. As lost rental income is a damage that flows from an early end of tenancy, as the damages arising from an early end of tenancy have been determined by agreement in advance at \$1,050.00, I find that by the Landlord collecting lost rental income for January 1 and 2, 2018 and by also claiming the pre-agreed limiting amount of liquidated damages for ending the tenancy early, the Landlord has acted in conflict with the agreement on liquidated damages. I resolve this conflict in favor of the Tenant and dismiss the claim for liquidated damages.

As the Landlord’s claim for liquidated damages has not been successful I decline to award recovery of the filing fee and in effect the Landlord’s application is dismissed in its entirety. As the Landlord has no valid claim against the security deposit I dismiss the Landlord’s claim to retain the security deposit and I order that the Landlord return the security deposit plus zero interest of **\$1,050.00** to the Tenants forthwith.

Conclusion

The application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,050.00**. 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: August 22, 2018

Residential Tenancy Branch