



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGIAN HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FFL

Introduction

On January 4, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for loss under the Act; for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord’s agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Dispute Resolution Proceeding on January 8, 2018, using registered mail. The Landlord provided the registered mail tracking number as proof of service. The Landlord testified that he sent the registered mail to the address the Tenant provided him as his forwarding address shortly after the tenancy ended. The Landlord testified that the registered mail was returned to him as unclaimed.

I find that the Tenant has been duly served with the Notice of Dispute Resolution proceeding in accordance with sections 89 and 90 of the *Act*. I find that the Tenant was deemed served with the Notice on the fifth day after it was mailed.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Landlord indicated that he had submitted a breakdown of his claim for damage; however his document could not be located. The Landlord agreed to withdraw the claim for damage with the right to reapply at a later date.

The hearing proceeded on the Landlord’s claim for liquidated damages and to retain the security deposit.

Issues to be Decided

- Is the Landlord entitled to liquidated damages?
- Is the Landlord entitled to keep the security deposit towards his claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2016, as a fixed term tenancy to continue until October 31, 2017. Rent in the amount of \$1,395.00 was to be paid by the first day of each month. The Tenant paid the Landlord a security deposit of \$695.00. The Landlord provided a copy of the tenancy agreement.

The tenancy agreement contains a liquidated damages clause that states the Tenant will pay the Landlord \$1,395.00 if the Tenant ends the tenancy before the end of the fixed term. The liquidated damages clause states that the charge is for all costs associated with re-renting the rental unit.

The Landlord testified that the Tenant ended the tenancy early by moving out of the rental unit on March 31, 2017. The Landlord had to find a new Tenant to rent the unit.

The Landlord is claiming the amount of \$1,395.00 for liquidated damages and is seeking to keep the security deposit of \$695.00 in partial satisfaction of his claim.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant moved out of the rental unit prior to the end of the fixed term tenancy agreement.

I find that the tenancy agreement contains a liquidated damages clause that requires the Tenant to pay the Landlord \$1,395.00 if the Tenant moves out early.

I award the Landlord liquidated damages in the amount of \$1,395.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I authorize the Landlord to keep the security deposit of \$695.00 in partial satisfaction of his awards. The Landlord is granted a monetary order for the balance of \$800.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant moved out of the rental unit prior to the end of the fixed term tenancy.

I award the Landlord liquidated damages in the amount of \$1,395.00. I order that the Landlord can keep the security deposit in the amount of \$695.00 in partial satisfaction of the claim.

The Landlord is granted a monetary order for the balance of \$800.00.

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 07, 2018

Residential Tenancy Branch