



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

This hearing was convened in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for compensation for loss or damage pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to service of the application and evidence on file.

Issues

Is the landlord entitled to a monetary award for compensation for loss or damage?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background

A written tenancy agreement was entered into and signed by the parties on July 16, 2018. A copy of the written agreement was provided on file. The tenancy was set to begin on August 16, 2018 with a monthly rent of \$2900.00 payable on the 1st day of each month. The tenancy was for an initial fixed term of twelve months. The tenants paid a security deposit of \$1450.00 at the start of the tenancy which the landlord continues to hold.

On July 25, 2018 the tenants provided written notice to the landlord that for personal reasons they would not be moving into the rental unit and were breaking the lease.

Evidence & Analysis

The landlord's agent is claiming \$1450.00 in liquidated damages as the tenants ended the fixed term tenancy early. The landlord's agent submits the tenants initialed and signed the liquidated damages provision in the tenancy agreement. The landlord's agent testified that the liquidated damages are to cover the administrative costs incurred to re-rent the apartment which include advertising costs and a fee charged to the landlord for securing a new tenant.

The tenant argues that he was pressured into signing the lease and that he hadn't yet received the keys to the rental so he thinks it is not fair that his security deposit is not returned.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$1450.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance to the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after a tenant breach. I find the amount of \$1450.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit which includes a fee charged to the landlord for securing a new tenant. I find this amount is not extravagant and does not constitute a penalty.

I accept the landlord's claim of \$1450.00 in liquidated damages.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenants for a total monetary award of \$1550.00.

The landlord continues to hold a security deposit in the amount of \$1450.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

The landlord is granted a monetary order for the balance of \$100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: December 14, 2018

Residential Tenancy Branch