



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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 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. The tenant acknowledged receipt of the landlord's application and for dispute resolution and evidence package but states that he lost the documents as they were stolen out of his vehicle.

The tenant's interpreter requested an adjournment so he could have an opportunity to review the evidence if the landlord were to resend it. The landlord's agent did not agree to the adjournment request and stated the only evidence submitted by the landlord was a hand written notice to end tenancy provided by the tenant himself.

I declined the tenant's adjournment request as there was not any evidence on file that the tenant would not have already been aware of. Neither was there any evidence or explanation from the tenant that he attempted to contact the landlord or the Residential Tenancy Branch prior to the hearing date to request a copy of the evidence on file.

Issues

Is the landlord entitled to a monetary compensation as claimed?

Background & Evidence

The parties entered into a written tenancy agreement on July 18, 2018. The tenancy was set to begin on August 15, 2018 and was supposed to be for a fixed term of one year expiring on July 31, 2019. The monthly rent was to be \$1750.00. The tenant paid a security deposit of \$875.00 at the start of the tenancy which the landlord continues to retain.

By way of a letter dated August 9, 2018, the tenant advised the landlord he would be cancelling the tenancy agreement due to personal circumstances. The tenant also authorized the landlord to retain the security deposit. On August 20, 2018, the tenant later wrote to the landlord stating he was cancelling his authorization to retain the security deposit.

The landlord is claiming \$875.00. in liquidated damages as the tenant ended the fixed term tenancy early. The landlord submits the tenancy agreement signed by the tenant provides for liquidated damages to cover the administrative costs associated with re-renting the unit.

The tenant testified through his interpreter that he did not understand the terms of the tenancy agreement he signed. The tenant submits that he called the landlord prior to cancelling the agreement and was under the impression that he would not be penalized for breaking the lease.

Analysis

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.

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$875.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

The tenant's signed a binding legal contract and his claim that he did not understand what he was signing is no defense. The tenant also submitted insufficient evidence that the landlord agreed to waive the penalty.

I find the amount of \$875.00 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. I find this amount is not extravagant and does not constitute a penalty. I accept the landlord's claim of **\$875.00** 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 for a total monetary award of **\$975.00**.

The landlord continues to hold a security deposit and pet deposit in the amount of \$875.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, the landlord is entitled to a monetary order in the amount 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: January 11, 2019

Residential Tenancy Branch