



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORPORATION
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On October 9, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for liquidated damages, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and one of the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Tenant testified that she received the documentary evidence from the Landlord and that she, the Tenant, did not submit any documentary evidence for this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Landlord receive a Monetary Order for liquidated damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on February 15, 2018. The monthly rent was \$1,950.00 and the Landlord collected and still holds a \$975.00 security deposit. The Tenancy Agreement contained a clause that stated in part, that if the Tenants provide the Landlord notice to end the tenancy by vacating before the end of the fixed term, the Tenants will pay the Landlord the sum of \$1,950.00 as liquidated damages. The liquidated damages clause was initialled by all parties and the Tenancy Agreement was signed by all parties.

The Landlord testified that the Tenants initially provided the Landlord an undated, hand-written notice, sometime in mid-September 2018, and stated that they were giving up possession of the rental unit by 1:00 p.m. on September 30, 2018. The letter also stated that the Tenants would be forfeiting their damage (security) deposit as agreed upon, for breaking their agreement.

The Landlord acknowledged that the Tenants were not getting along and that they wanted to end the tenancy early. Rather than charging the Tenants the full amount of the liquidated damages in the amount of \$1,950.00, the Landlord had agreed to retain the security deposit in the amount of \$975.00, as compensation.

The Landlord stated that instead of signing the move-out Condition Inspection Report, dated September 30, 2018, that acknowledged that the Tenants would be forfeiting their security deposit, the Tenant initialed and wrote "will dispute". The Landlord subsequently applied for Dispute Resolution on October 9, 2018.

The Landlord testified that the Tenants ended their fixed-term tenancy early and by doing so, breached the terms of the Tenancy Agreement. The Landlord is claiming compensation for the liquidated damages in the amount of \$1,950.00 and the cost of the filing fee, in the amount of \$100.00, for a total monetary claim of \$2,050.00. The Landlord stated that if she is awarded the monetary claim, she would be willing to accept the security deposit and the \$35.00 key/fob deposit she currently holds, for a total amount of \$1,010.00, as compensation for her claim.

The Tenant testified that they initially contacted the Landlord in August to ask how they could end their tenancy early. The Tenant acknowledged that they had initially agreed,

in writing, to let the Landlord keep the security deposit as a result of the Tenants ending their fixed-term tenancy early; however, stated that she felt like that was the only way the Landlord would let them end their lease early.

The Tenant said that she should have the security deposit returned and not be charged the liquidated damages as the Landlord found new tenants for October 1, 2018 and rented out the rental unit at a higher monthly rate, therefore, did not incur a loss.

Analysis

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence from the Landlord that the Tenants entered into an agreement with the Landlord to pay liquidated damages if the Tenants ended the tenancy earlier than the fixed-term end date. I find that the Tenants ended their tenancy early and breached the Tenancy Agreement by moving out of the rental unit, four months prior to the end date, on September 30, 2018.

Policy Guideline 4 states that if a liquidated damages clause is determined to be valid, the Tenants must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum.

I accept the undisputed evidence that the Landlord made efforts and was successful in finding new tenants for the rental unit for October 1, 2018. Upon review of the liquidated damages clause in the Tenancy Agreement, I find that it is associated to costs for re-renting the rental unit and not established as a penalty to the Tenants. I find the

liquidated damages clause is valid and that the reduced amount that the Landlord is claiming is reasonable versus oppressive.

Upon review of the testimony and evidence, I find that the Landlord has successfully established a compensation claim due to the Tenants ending their tenancy early. I find that the Landlord's total monetary claim for \$2,050.00 is justified and that the Landlord has shown consideration towards the Tenants by accepting \$1,010.00 in compensation.

The Landlord has established a claim in the amount of \$1,010.00. Pursuant to Sections 72(2) and 67 of the Act, I authorize the Landlord to keep the Tenants' security deposit and key fob deposit in the amount of \$1,010.00, in full satisfaction of this Application.

Conclusion

Pursuant to Sections 72(2) and 67 of the Act, I authorize the Landlord to keep the Tenants' security deposit and key fob deposit, in the amount of \$1,010.00, in full satisfaction of the Landlord's Application for Dispute Resolution.

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: February 05, 2019

Residential Tenancy Branch