



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damage or compensation under the *Act*, and permission to retain the security deposit. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they had received each other’s evidence packages.

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 is described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on September 1, 2018, as a one-year fixed term tenancy. Rent in the amount of \$3,100.00 was payable on the first day of each month, and the Tenant paid a security deposit of \$1,550.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement and addendum to this tenancy agreement into documentary evidence.

Both the parties agreed that the Tenant gave notice to end the tenancy to the Landlord on December 10, 2018, and that the Tenant moved out in accordance with that notice on December 21, 2018. Both the Landlord and the Tenants testified that the move-out inspection had been conducted in accordance with the *Act*.

The Landlord is requesting to keep the \$1,550.00 security Deposit for this tenancy, to enforce provision number three of the addendum to this tenancy agreement, which states the following:

“If within the first year, the tenant decides to cancel the Residential Tenancy Agreement, please provide 1-month notice. The Penalty will be ½ month rent after you move out.”

The Tenant testified that he feels given the low availability in the rental market were the rental unit it located, it should have been easy for the Landlord to find a new renter to take over the rental unit. The Tenant testified that he did not feel a penalty should be allowed.

The Landlords testified that the Tenant was a good tenant and that he was not going after his losses in rental income, that he just wanted to enforce the penalty clause in the tenancy agreement, for the Tenant ending the tenancy early.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the addendum to the tenancy agreement, which the Landlord is seeking to enforce in these proceedings and I note the Landlord’s use of the word “penalty.”

The Landlord was advised in the hearing that there are no provisions in the *Act* which would provide compensation for a landlord for a penalty clause in a tenancy agreement. As such, I dismiss the Landlords’ claim in its entirety.

I order the Landlord to return the security deposit that he is holding for this tenancy to the Tenants within 15 days of receiving this decision.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

I order the Landlord to return the security deposit, in the amount of \$1,550.00 to the Tenant within 15 days of receiving this decision.

I grant the Tenant a conditional **Monetary Order** in the amount of **\$1,550.00**, to be served on the Landlord if the Landlord does not comply as ordered. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order. Should the Landlord 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: April 30, 2019

Residential Tenancy Branch