



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses.

Since both parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties executed the tenancy agreement on July 10, 2018. The tenancy agreement was a fixed term tenancy agreement with a termination date of July 31, 2019. The monthly rent was \$2,350.00 and the tenant paid security deposit of \$1,175.00.

The tenancy agreement states the following regarding liquidated damages:

7. Liquidated damages: Should the Tenant (1) fail to take possession of the premises or (2) have abandoned or vacated the premises before the expiry of the tenancy created by this Agreement; there will immediately be payable by the Tenant to this Landlord monies for all costs incurred as liquidated damages and said monies will become immediately and said monies will be invoiced for accordingly. **Liquidated damages are charges such as rent lost due to suite vacancy, advertising costs, leasing commissions (\$300.00 + applicable taxes), administrative costs and any other reasonable costs incurred.** The landlord may request that one month's rent be paid as a deposit for Liquidated damages. Once all Liquidated damages have been incurred, a reconciliation will be done and the excess monies will be refunded or in the event of a shortage on monies. An invoice will be prepared for payment by the tenant. (**Emphasis** added)

The tenants gave notice on January 25, 2019 that they were terminating the tenancy on March 31, 2019.

The tenants moved out on March 22, 2019. A condition inspection report was prepared on March 22, 2019. The parties agreed that there was no damage to the rental unit.

The tenant agreed in writing to a deduction of \$525.00 from security deposit. The condition inspection report stated the \$525.00 deduction was for "liquidated damages." The tenant provided his forwarding address in the condition inspection report on March 22, 2019.

The landlords testified that they inadvertently overcharged the tenant for the liquidated damages. The landlord testified that he should have only withheld \$300.00 plus tax, not \$525.00.

The tenant argued that the \$525.00 payment from the security deposit represented a full settlement of all claims including loss of rent. The tenant testified that he relied on the tenancy agreement which stated the liquidated damages clause includes claims for loss of rent. In addition, the tenant testified that he asked the landlord if everything was resolved when he signed the condition inspection report.

The landlord provided that tenants with a refund cheque in the amount of \$650.00 on April 8, 2019.

The landlords testified that they immediately attempted to find a new tenant. The landlords testified that they were able to find a new tenant starting on April 15, 2019 for the same amount of rent paid by the tenants. The landlord is requesting compensation for one-half of the April rent, being \$1,175.00, less the overpayment of the liquidated damages.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of

probabilities, which means that it is more likely than not that the facts occurred as claimed.

The landlords claimed that the tenants owed liquidated damages and damages for loss of rent resulting from the tenants' early termination of the fixed term tenancy agreement. The tenants argued that the \$525.00 that was surrendered from the security deposit fully satisfied all financial obligations to the landlord.

Residential Tenancy Policy Guideline No. 4 defines liquidated damages as "...a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement."

In this tenancy agreement, the liquidated damages specifically included compensation for loss of rent from vacancy of the suite. As such, I find that the liquidated damages clause in the tenancy agreement already provided the landlord with compensation for loss of rent from early termination of the tenancy agreement which renders the landlords' application herein for compensation for loss of rent duplicative of the liquidated damages. As such, I dismiss the landlord's application for monetary compensation for loss of rent.

In addition, since the landlord has not been successful this matter, I dismiss the landlord's request for recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The landlord's application is dismissed in its entirety.

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: July 23, 2019

Residential Tenancy Branch