



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED
PARTNERSHIP and [tenant name suppressed to
protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 01, 2019 (the "Application"). The Landlord applied for compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

The Agents appeared at the hearing for the Landlord. The Tenants did not appear. I explained the hearing process to the Agents who did not have questions when asked. The Agents provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that hearing packages and evidence were sent to each Tenant at their forwarding address by registered mail on May 9 or 10, 2019. He testified that the Tenants provided their forwarding address on the Condition Inspection Report on April 30, 2019. The Agent testified that he looked the tracking numbers up for these packages and they were delivered to the Tenants. The Landlord had not submitted documentary evidence of service. The Agent was not able to provide the tracking numbers for the packages.

Based on the undisputed testimony of the Agent, I find the Tenants were served with the hearing packages and evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act"). The Tenants are deemed to have received the packages. Further, I find the Tenants were served in sufficient time to allow them to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agents were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$1,175.00 based on a liquidated damages clause in the tenancy agreement.

The Landlord submitted a written tenancy agreement. It is between a different landlord and the Tenants in relation to the rental unit. The Agent testified that the landlord named on the tenancy agreement owned the rental unit when the agreement was entered into and the Landlord purchased the rental unit in October of 2018. The tenancy started July 01, 2018 and was for a fixed term ending June 30, 2019. Rent and fees were \$2,470.00 per month due on the first day of each month. The Tenants paid a \$1,175.00 security deposit. The agreement is signed by all parties.

Clause 5 in the tenancy agreement states:

LIQUIDATED DAMAGES: If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act...the tenant will pay to the Landlord the equivalent of their security deposit amount as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the Landlord's costs of re-renting the unit...

The Agent testified that the parties did a move-in inspection July 01, 2018 and did a move-out inspection April 30, 2019. The Agent testified that the Tenants provided their forwarding address on the Condition Inspection Report on April 30, 2019.

The Agent testified as follows in relation to the request for compensation based on the liquidated damages clause.

On March 18, 2019, the Tenants provided the Landlord with a letter ending the tenancy early. This letter is in evidence. The Tenants vacated the rental unit April 30, 2019.

The Landlord is relying on clause 5 of the tenancy agreement. The Landlord is seeking to keep the security deposit because of the effort and work that goes into re-renting the rental unit to cover rental loss. The amount sought is a pre-estimate of the cost to re-rent the unit. The Landlord cannot foresee how many hours of work it will take to re-rent the unit which is why the amount is tied to the security deposit amount. Sometimes the cost to re-rent a unit is more than the security deposit.

The rental unit was re-rented for June 01, 2019. He did 13 days of showings for the unit. It took 50 hours of work to re-rent the unit. He gets paid \$20.00 per hour for this work. The Landlord posted the unit for rent on rental websites which cost \$200.00. The Landlord had to process applications for new tenants which took two hours and cost \$40.00.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

I accept the undisputed testimony of the Agent and find the Tenants vacated the rental unit April 30, 2019. I find the tenancy ended on this date.

I accept the undisputed testimony of the Agent and find the Tenants provided the Landlord with their forwarding address on the Condition Inspection Report on April 30, 2019.

April 30, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from April 30, 2019 to return the security deposit or file the Application claiming against it. The Application was filed May 01, 2019, within the time limit. I find the Landlord complied with section 38(1) of the *Act*.

Policy Guideline 4 addresses liquidated damages and states in part:

A liquidated damages clause is 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. 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 considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant 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...

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss...

Based on the tenancy agreement submitted and undisputed testimony of the Agent, I accept that the Tenants entered into a fixed term tenancy ending June 30, 2019.

Based on the letter from the Tenants ending the tenancy and undisputed testimony of the Agent, I accept that the Tenants ended the tenancy prior to the end of the fixed term. This was a breach of section 45(2) of the *Act* and a breach of the tenancy agreement.

Given the Tenants ended the fixed term tenancy early, the liquidated damages clause applies.

Pursuant to Policy Guideline 4, a liquidated damages clause should not provide for the automatic forfeiture of the security deposit in the event of a breach. I find the wording of clause 5 to be somewhat different than this as it states that the Tenants will pay the

Landlord “the equivalent of their security deposit amount” versus stating that the Landlord will keep the security deposit.

Further, I am satisfied based on the undisputed testimony of the Agent that the amount is a genuine pre-estimate of loss. I accept the undisputed testimony of the Agent about the work required to re-rent units. I also accept the undisputed testimony of the Agent about the cost associated with re-renting units. I accept that the amount set out in clause 5 of the tenancy agreement is meant to cover the cost of re-renting the unit.

I do not find the \$1,175.00 sought to be extravagant compared to the greatest loss that could follow a breach. Based on the undisputed testimony of the Agent, I accept that it cost more than \$1,175.00 to re-rent the unit. I find the amount sought to be reasonable.

I do not find the amount oppressive given the rent amount and the actual cost of re-renting the rental unit.

I am satisfied the amount sought is not a penalty. I find clause 5 of the tenancy agreement enforceable. Clause 5 of the tenancy agreement applies as the Tenants ended the fixed term tenancy early. I award the Landlord the \$1,175.00 sought.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$1,275.00. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the security deposit. The Landlord is entitled to a further Monetary Order in the amount of \$100.00.

Conclusion

The Landlord is entitled to \$1,275.00. The Landlord is authorized to keep the security deposit. The Landlord is entitled to a Monetary Order in the amount of \$100.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: August 02, 2019