



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peter Wall Mansion & Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on September 17, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord attended the hearing. However, the Tenant did not. The Landlord stated that he sent the Notice of Hearing, and evidence to the Tenant's forwarding address (provided on the move-out inspection report) by registered mail on June 12, 2019 (tracking info provided). Pursuant to section 89 and 90 of the Act, I deem this package was served to the Tenant 5 days after it was mailed, June 17, 2019.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

- Are the Landlords entitled to compensation for money owed or damage or loss under the Act?
- Are the Landlords entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

The tenancy agreement provided into evidence shows that monthly rent was \$1,725.00, and was due on the first of the month. The tenancy agreement started on October 2, 2018, and was for a fixed term until September 30, 2019. The Landlord stated that they hold a security deposit in the amount of \$862.50.

The Landlord is seeking \$1,725.00 in this application because the Tenant signed and agreed to the following term in the tenancy agreement:

(i) To terminate this lease prior to the expiry date on the 30TH day of the SEPTEMBER, 2019 the Tenant will be required to pay \$ 1725.00 and must give one calendar month's notice. The Tenant agrees that the lease breaking sum may be deducted from the security deposit or otherwise be paid.

The Landlord stated that the Tenant moved out at the end of May 2019, and he broke the lease. The Landlord is seeking to recover the above "lease breaking sum."

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The Landlord is seeking to recover the "lease breaking sum" in the amount of \$1,725.00, since this is the amount the Tenant agreed to pay if he broke the lease. I am satisfied that the Tenant moved out prior to the end of his fixed term tenancy agreement, which is a breach of the agreement. The Landlord is seeking damages as a result. However, the Landlord provided no indication as to what their actual costs were to re-rent the unit, or to manage the Tenant's early departure. There is no evidence to show that the Landlord actually incurred any losses.

I note that Residential Tenancy Policy Guideline 4 provides for liquidated damages. 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 fixed term by the Tenant. If a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum unless the sum is found to be a penalty.

In this case, I find that the language used under item #3(1)(a) of the tenancy agreement is not explicit or sufficiently clear such that both parties would know that this item is actually a liquidated damages clause. Further, there is insufficient evidence to show that \$1,725.00 is a genuine pre-estimate of the Landlords' costs to re-rent the unit (there is also no evidence to show what the costs were). I find that the language used in the tenancy agreement (described as a "lease break sum"), is more indicative of this amount being a penalty. Based on this, I find

this clause in the tenancy agreement, is a penalty, not a reasonable liquidated damages clause and the Landlord's claim is dismissed.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. However, since the Landlord was not successful, I decline to award the recovery of this fee.

I order the Landlord to return the security deposit to the Tenant. A monetary order will be issued to the Tenant for this amount, \$862.50.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$862.50**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: September 17, 2019

Residential Tenancy Branch