



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WYNN REAL ESTATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$840.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement – claiming against the security deposit for this claim, and to recover the cost of their filing fee.

The Landlord, D.Z., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Application Hearing documents, and documentary submissions by Canada Post registered mail, sent on September 19, 2019. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the hearing and confirmed his understanding that the Decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement and confirmed in the hearing that it contains the following. The fixed term tenancy was scheduled to begin on September 1, 2019, running to August 31, 2020, and then proceeding on a periodic basis. The monthly rent of \$1,600.00 was due on the first day of each month. The Landlord said that the Tenant paid the Landlord a security deposit of \$800.00, and no pet damage deposit.

The Landlord said that the Tenant viewed the unit and decided to proceed with renting it. The Landlord said that they took steps to vet the Tenant, as a good tenant, then the Parties signed the tenancy agreement and the Tenant paid a security deposit.

The Landlord said that shortly after signing – about 2 – 3 weeks later, the Tenant notified the Landlord that he would not be able to proceed with the tenancy. The Landlord said: “To mitigate, we advertised to find a tenant to replace him. We had to redo the whole process again, advertise, apply, vet candidates. We found a tenant on time, so there was no loss of rent, but the Landlord owes to Property Manager fees for arranging another placement. There were additional costs incurred by the property managers, which are passed on to the Owner.

In the Owner’s Property Management agreement for tenant placement, the Owner must pay a charge of a half month’s rent plus tax. This clause states:

4.4 Fees and Services

...

- (b) **Tenant Placement** – The Owner hereby agrees to pay a fee equal To Fifty (50%) percent of the first month’s rent + GST, per Twelve (12) month rental period.

The Landlord said that with the \$1,600.00 rent, this fee comes to \$840.00, pursuant to #4.4(b) of the Fees and Services portion of the Property Management agreement. The Landlord said the Tenant was warned prior to breaking the lease that he will be

responsible for fees the Landlord incurs as a result of cancelling the tenancy agreement. The Landlord said: "We spoke with the Tenant about it. He did not want to discuss this. He was informed about the cost prior to arbitration, but after the tenancy agreement was signed. However, the tenancy agreement Addendum, which the Tenant signed, states at term 14 that upon early termination of the fixed term lease, the Tenant would be responsible for any losses incurred by the Landlord, including the Agent's commission." The Addendum states:

14. EARLY LEASE TERMINATION. In the case the Tenant terminated the lease before the expiry date, the Tenant will be liable for all cost including but not limited to Agent's commission for rental, and any loss of rental income that the landlord might occur due to early termination.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 16 of the Act states that the Parties rights and obligations under a tenancy agreement begin when the tenancy agreement is executed, even if the Tenant has never occupied the rental unit.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

On review of the tenancy agreement, I find that the Tenant signed it on July 15, 2019, and the Landlord signed it on July 17, 2019; therefore, I find the Tenant's rights and obligations under the terms of that agreement began on July 17, 2019, when both Parties had signed the tenancy agreement, including the Addendum, which is referenced on page six of the tenancy agreement.

I find that with his signature and initials, the Tenant agreed to the terms of the tenancy agreement Addendum. This included agreeing to compensate the Landlord for the costs incurred by the Owner for having to re-rent the rental unit, since the Tenant ended the tenancy early.

Upon considering all of the evidence before me, overall, I find that the Landlord has provided sufficient evidence to establish that the Tenant owes the Landlord \$840.00 in costs the Landlord incurred, due to the Tenant's early termination of the tenancy agreement. I award the Landlord \$840.00 from the Tenant pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act, for a total award of **\$940.00**.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$800.00 in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenant's \$800.00 security deposit. I grant the Landlord a Monetary Order of **\$140.00** for the amount of the award remaining unpaid after set-off.

Conclusion

The Landlord's claim for compensation from the Tenant is successful in the amount of \$840.00. The Tenant ended a fixed term tenancy agreement early, and as a result, was responsible for the costs incurred by the Landlord in re-renting the rental unit. The Landlord is also awarded recovery of their \$100.00 Application filing fee for a total award of **\$940.00**.

The Landlord is authorized to retain the Tenant's \$800.00 security deposit in partial satisfaction of this award. I grant the Landlord a Monetary Order under section 67 of the Act in the amount of **\$140.00** for the remainder owing. This Order must be served on the Tenant by the Landlord and 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 *Residential Tenancy Act*.

Dated: January 22, 2020

Residential Tenancy Branch