



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Onni Property Management Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened in response to an application made November 7, 2019 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenants confirm its email address as set out in the Landlord’s application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on March 1, 2019 for a fixed term to end March 31, 2021. The tenancy ended on October 31, 2019. At the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit and \$1,250.00 as a pet deposit. Rent of \$2,500.00 was payable on the first day of each month. The tenancy agreement provides for liquidated damages of \$800.00. On November 7, 2019 the Landlord accepted the Tenants’ payment of \$800.00 for the liquidated damages along with the Tenant’s repayment of \$400.00 in rental incentives given by the Landlord.

The Landlord states that it received the Tenants' notice to end tenancy on October 10, 2019 and advertised the unit online on the same date for the same rental amount. The Landlord states that the unit has still to be rented. The Landlord claims lost rental income for November 2019 to March 2020 inclusive. The Landlord provides a copy of the tenancy agreement along with additional terms that contain the liquidated damages clause. The Landlord argues that it is entitled to both liquidated damages and lost rental income for the breach of the fixed term.

The Tenant states that it ended the tenancy because of the Landlord's lack of action on the Tenants' complaints of breaches, including noise and smoke in the building.

It is noted that at the end of the hearing the Parties gave evidence that each had not received all or any of the other's documentary evidence.

Analysis

Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the undisputed evidence that the tenancy was a fixed term and that the Tenants moved out of the unit before the end of the fixed term I find that the Tenants breached the tenancy agreement and are therefore liable for damages arising from the breach of the fixed term.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach of a term of

the agreement and no other monies are then payable as damages for that breach. In a tenancy agreement with a fixed term this amount limits or determines in advance the damages flowing from the early end of the tenancy or a breach of a fixed term. The liquidated term that requires the Tenant to also be responsible for any months remaining on the fixed term until the premises are re-rented contradicts this legal principle and has an internal inconsistency. In order to resolve this issue, I find that this part of the liquidated damages is not enforceable.

The liquidated damages clause also provides that the liquidated damages must be paid without prejudice to any other remedies. In order to not to contradict the legal principle of liquidated damages, I consider that this part of the clause indicates that any additional remedies would arise from different breaches of the tenancy agreement or Act such as not paying rent while occupying the unit or leaving the unit with damages such that the re-rental of the unit is delayed causing a loss of rental income. These are not damages that would flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damages amount. For these reasons and based on the undisputed evidence that the Landlord accepted the payment of the liquidated damages from the Tenant, I find that the Landlord has not substantiated that it is entitled to any additional compensation for the breach of the fixed term. I therefore dismiss the claim for 5 months lost rental income.

It is noted that the only relevant documentary evidence for the resolution of this dispute is the tenancy agreement and the additional terms containing the liquidated damages clause. As the Parties gave agreed facts of the relevant terms of the tenancy agreement, as there is no evidence that the Tenants did not have their own copy of the tenancy agreement and as there was no dispute over the wording of the liquidated damages clause provided by the Landlord I consider that the remaining evidence that may or may not have been served is not relevant. It therefore has not been considered.

It is also noted that the Landlord's application appears to make a claim for the return of a rental incentive. No amount for any incentive was included in the monetary order worksheet and the Landlord gave no evidence at the hearing in relation to a claim for repayment of any incentives. As a result, I dismiss this claim.

As the Landlord's claim for compensation has not been successful, I find that the Landlord is not entitled to recovery of the filing fee and in effect the application is dismissed in its entirety. As the Landlord is still holding the deposits, I order the Landlord to return the combined security and pet deposit plus zero of **\$2,500.00** to the Tenants forthwith.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$2,500.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 8, 2020

Residential Tenancy Branch