



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FFL

Introduction

On December 3, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing at 1:30 p.m. on this date. The Landlord’s agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served with the Notice of Dispute Resolution Proceeding by registered mail sent on December 6, 2019. The Landlord testified that the registered mail was sent to the forwarding address provided by the Tenant. The Landlord provided the registered mail tracking number as proof of service.

I find that the Tenant has been duly served with notice of the hearing in accordance with sections 89 and 90 of the *Act*. The Tenant is deemed to have been served on December 11, 2019, the fifth day after it was mailed.

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

Issues to be Decided

- Is the Landlord entitled to liquidated damages?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on May 1, 2019, as a one-year fixed term tenancy to continue until April 30, 2020. Rent in the amount of \$1,495.00 was to be paid by first day of each month. The Tenant paid the Landlord a security deposit of \$747.50. The tenancy agreement contains a liquidated damages clause which provides that the Tenant will pay the Landlord the sum of \$805.33 if the if the Tenant ends the fixed term tenancy before the end of the term. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants breached the fixed term tenancy agreement by giving notice to end the tenancy on November 30, 2019 and moving out of the rental unit. The Landlord provided a copy of the Tenant's notice to end tenancy.

The Landlord is seeking compensation in the amount of \$805.33 for liquidated damages.

The Landlord is seeking to keep the security deposit of \$747.50 in partial satisfaction of his claim.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant ended the fixed term tenancy early.

I have reviewed the tenancy agreement and I find that the Landlord is entitled to claim the liquidated damages amount of \$805.33.

I order that the Landlord can keep the security deposit in the amount of \$747.50 in partial satisfaction of the Landlord's claim for liquidated damages.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$905.33 comprised of \$805.33 for liquidated damages, and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$747.50 towards the award of \$905.33, I find that the Landlord is entitled to a monetary order for the balance of \$157.83. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant ended the fixed term tenancy early. The Landlord has established a monetary claim in the amount of \$905.33. I order that the Landlord can keep the security deposit in the amount of \$747.50 in partial satisfaction of the Landlord's award.

I grant the Landlord a monetary order in the amount of \$157.83.

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: May 05, 2020

Residential Tenancy Branch