



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NYSTAR DEVELOPMENTS CORP.
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On April 9, 2020, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with J.L. attending as an agent for the Landlord. The Tenant attended the hearing as well. All parties in attendance provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing package to the Tenant on April 9, 2020 by registered mail. The Tenant acknowledged that she received this package. Based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing package.

He also advised that he served his evidence to the Tenant by registered mail on July 13, 2020 and the Tenant confirmed that she received this package as well. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant advised that she served her evidence to the Landlord by registered mail on July 28, 2020 and the Landlord confirmed that he received this package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2019 as a fixed term tenancy ending on August 31, 2020. However, the tenancy ended on March 31, 2020 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$1,300.00 per month and was due on the first day of each month. A security deposit of \$650.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties also agreed that the Tenant provided her forwarding address by email on April 2, 2020.

The Landlord advised that he is seeking compensation in the amount of **\$426.00** because the Tenant signed a fixed term tenancy ending on August 31, 2020, but she gave notice to end her tenancy early and gave up vacant possession of the rental unit on March 31, 2020. He referenced clause six in the tenancy agreement which outlined that liquidated damages in the amount of \$500.00 would be charged if the Tenant ended the fixed term tenancy early. He stated that the amount he is seeking is the cost for the leasing agent's time and effort to re-rent the rental unit. He also submitted an invoice as documentary evidence to demonstrate that he paid the leasing agent for this work. As well, he indicated that in addition to making this Application, on July 13, 2020,

he returned to the Tenant an amount of \$124.00. This amount was the security deposit, less the \$426.00 leasing agent fee, and less the \$100.00 filing fee for this Application.

The Tenant advised that she had a verbal agreement with the Landlord that he would return her deposit in full. She stated that she left the rental unit in a clean condition, but she acknowledged that she ended the fixed term tenancy early. She questioned the costs of this re-leasing fee as she helped the Landlord find a new tenant.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant's forwarding address on April 2, 2020. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on April 9, 2020. As the Landlord made this Application within 15 days of receiving the Tenant's forwarding address, I am satisfied that the Landlord did not breach the requirements of Section 38. As such, I find that the doubling provisions of the *Act* do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or

loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s request for liquidated damages, I find it important to note that Policy Guideline # 4 states that 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” and that the “amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into”. This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- 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.

Based on the testimony before me, the undisputed evidence is that the Tenant ended the tenancy contrary to the *Act* and that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. When reviewing the evidence, I am also satisfied that the amount of liquidated damages is a reasonable and genuine pre-estimate of loss to re-rent the rental unit.

Given that the Tenant broke the fixed term tenancy early, I am satisfied that the Landlord has substantiated this claim. As the Landlord has already presumptively deducted this amount of \$426.00 from the security deposit, I decline to award a Monetary Order.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. However, as the Landlord has already presumptively deducted this amount from the security deposit and returned the balance, I decline to award a Monetary Order for this amount.

Conclusion

The Landlord was successful in his claim; however, he is not provided with a Monetary Order as he has already deducted the amounts awarded, and returned the balance.

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: August 14, 2020

Residential Tenancy Branch