



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened in response to an application 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.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on September 1, 2020 on a fixed term to end January 21, 2021. Rent of \$1,450.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$725.00 as a security deposit. The tenancy agreement provides for liquidated damages of \$1,450.00. On December 30, 2020 the Tenant provided notice to end the tenancy for January 31, 2021. The Tenant returned the keys at the move-out inspection on January 21, 2021. The Tenant paid full rent for January 2021.

The Landlord limits its claim for liquidated damages to \$725.00 for the Tenant's breach of the fixed term.

The Tenant states that mold began to grow in the unit, and it affected the health of both herself and her infant of two months. The Tenant provides a medical certificate. The Tenant states that on December 28, 2020 they informed the Landlord in writing of the problem and moved out of the unit with only essential items. The Tenant states that the Landlord indicated that it would come in and spray the affected areas with bleach and the paint the unit. The Tenant states that the Landlord was informed that such spraying of the unit while the Tenant and the infant occupied the unit was not going to be allowed. The Tenant states that they were fully moved out of the unit on January 15, 2021. The Tenant argues that the Landlord's proposed bleach solution was not an effective method of mold remediation. The Tenant argues that the Landlord breached a material term of the tenancy by not properly providing and maintaining the unit.

The Landlord states that the unit was advertised on-line for the same rental amount. The Landlord states that it does not know when the unit was advertised as it was not the manager at the time. The Landlord states that it does not have direct knowledge of any of the details of the advertisement and did not see any advertisement but bases its belief of the advertisement on the subsequent rental of the unit for the same rental amount. The Landlord states that the unit was rented for \$1,450.00 with a tenancy start date of February 15, 2021. The Landlord was not involved in the showing of the unit to prospective tenants and has no knowledge of the demand for the unit.

Analysis

Section 45(3) of the Act provides that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. Residential Tenancy Branch Policy Guideline #8 provides that to end a tenancy agreement for

breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Based on the Tenant's evidence that they did not include any deadline for the mold repair in its letter to the Landlord I find that the Tenant has not substantiated an entitlement to end the tenancy on this basis. The Tenant remains at liberty to make its own application if the Landlord by act or negligence caused any damage or loss to the Tenant due to mold being in the unit.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. The liquidated damages clause in the tenancy agreement provides that if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat the agreement at an end and in such event the sum of \$1,450.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. Although the Landlord failed to provide any supporting or direct evidence of the advertising of the unit, the Landlord elected to treat the tenancy as an end on January 30, 2010 thereby relieving the Landlord of mitigation efforts necessary for a lost rental income claim past January 30, 2021. As the Landlord is seeking only half of the liquidated damages amount set out in the tenancy agreement, I find that the Landlord has acted reasonably to mitigate its loss. Based on the undisputed evidence that the Tenant breached the fixed term tenancy I

find on a balance of probabilities that the Landlord is entitled to its claim of **\$725.00** for liquidated damages. As the Landlord has been successful, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$825.00**. Deducting the security deposit plus zero interest of **\$725.00** from this entitlement leaves **\$100.00** owed to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$725. 00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$100.00**. 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 28, 2021

Residential Tenancy Branch