



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Centurion Property Associates
Inc and [tenant name suppressed to protect privacy]

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 Landlords and Tenants 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 tenancy under written agreement started on June 1, 2020 on a fixed term to end May 31, 2021. On November 26, 2020 the Tenants gave their notice to end the tenancy for December 31, 2020 and moved out on that date. Rent of \$1,540.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$499.00 as a security deposit and \$770.00 as a pet deposit. Paragraph 42 of the addendum to the tenancy agreement provides for liquidated damages of \$1,540.00 payable to the Landlord if the Tenant ends the tenancy before the end of the fixed term.

The Landlord claims the liquidated damages amount of \$1,540.00 arising from the Tenant's breach of the fixed term. The Landlord also claims lost rental income for January 2021 of \$1,540.00 for the same breach of the fixed term.

The Landlord states that although the liquidated damages clause is not initiated the addendum containing this term was signed and that it is standard practice for their company to point out liquidated damages clause at signing. The Tenant states that only the other Tenant was present for the signing of the agreement and that the Tenant signed the tenancy agreement after the fact.

The Landlord states that the unit would have been advertised on their company website within 3 days receipt of the Tenant's notice to end tenancy. The Landlord states that the unit was advertised for monthly rent of \$1,540.00 and as being available for January 1, 2021. The Landlord confirms that the Landlord did not have any role in producing or placing the advertisement. The Landlord does not provide a copy of any advertisement. The Landlord states that the unit was rented for January 29, 2021 at the advertised rate. The Landlord clarifies that its claim for lost rental income has been reduced to \$1,391.00.

The Tenant argues that it should not have to pay the liquidated damages as there is no evidence of the actual re-rental costs or that any monies were actually expended on the re-rental of the unit. The Tenant states that it first heard about the liquidated damages after they gave their notice to end the tenancy and was then informed that the amount would cover many costs including the cost of credit checks. The Landlord confirms that the re-rental costs include credit check costs, document preparation and their time in conducting move-in and move-out inspections. The Tenant states that the Landlord's company employs person on salaries and that there would therefore not be any extra costs for their work in re-renting the unit.

The Tenant states that it frequently searched the internet for advertisements and found only one advertisement dated January 15, 2021. The Tenant argues that the Landlord did not act reasonably to mitigate lost rental income by restricting its advertising to its own company website.

Analysis

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. Although I consider that the Landlord may not claim lost rental income along with liquidated damages for the same breach as this would amount to double compensation, I make findings of entitlement set out below on a different basis.

Policy Guideline #4 sets out the following:

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. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

It is undisputed that the amount set out as the liquidated damages amount is equivalent to monthly rental amount. The Landlord provided no evidence of how this amount came to be a genuine pre-estimate of costs and I consider that regardless of the amount of monthly rent payable genuine costs re-rental costs would not be dependant on the monthly rent payable. Further the Landlord's evidence is that costs include costs for carrying out Landlord's obligations under the Act, such as conducting move-in and move-out inspections and are required by the Landlord regardless of any costs of re-rentals. For these reasons I find that the liquidated damages amount is not a genuine

pre-estimate of the costs of re-renting the unit and is only a penalty. I dismiss the claim for liquidated damages.

Given that the Landlord did not provide any copies of any advertisement of the unit and only provided evidence of what it expected from standard practice would occur in relation to advertising and given the Tenant's supported evidence that the unit was only advertised on January 15, 2021, I find on a balance of probabilities that the Landlord has not substantiated that it took reasonable steps to mitigate its losses as soon or shortly after November 26, 2020 when the Tenants gave their notice to end the tenancy. I therefore dismiss the claim for lost rental income.

As the Landlord has not been successful with its application, I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety. I order the Landlord to forthwith return the combined security and pet deposit plus zero interest of **\$1,269.00** to the Tenants.

Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$1,269.00**. 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: May 26, 2021

Residential Tenancy Branch