



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CA Realty Ltd dba Creighton and Associates
Realt and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

The Landlord filed their Application for Dispute Resolution on November 9, 2021 seeking compensation for monetary loss or other money owed. Additionally, they applied for the cost of the hearing filing fee.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity ask questions and present oral testimony during the hearing. The Tenant confirmed they received the Landlord's prepared documentary evidence. They also confirmed they did not prepare documents of their own.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement that both parties signed on April 5, 2021. The agreement is clear that the period of the tenancy was fixed, starting on May 1, 2021 and ending on April 30, 2022. It is specified that at the end of the term the tenancy may continue on a month-to-month basis. The rent amount was \$1,625. The Tenant paid a security deposit of \$812.50 on April 2, 2021.

A specific piece of the tenancy agreement addresses damages in the case where the Tenant ends the agreement early:

If the Tenant ends the fix term tenancy before the end of the original term . . the Landlord may, at the Landlord's option, treat this Agreement as being at an end. In such event, a sum equal to one half of one month's rent will be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty, to cover the administration costs of re-renting the Premises.

The Landlord claims the one-half month rent amount because the Tenant vacated after only six months and did not fulfill the entire fixed-term set out in the agreement. In this case, the clause set out above applies, and this is in consideration of the "extra cleaning and painting and additional work that was required to re-rent this suite."

The Landlord also provided the final unit inspection report. On that document, the Landlord indicated the full security deposit amount was owed to them. The Tenant signed the agreement; however, they also wrote that they wanted their security deposit returned to them.

The Tenant chose to end the tenancy on October 31, 2021. The Tenant in the hearing presented that they discussed this with management in August and sent their written notice "well over a month of vacating". The Tenant submitted a new tenant was in place "within a day" and there was no loss to the Landlord in this situation at all because the building had a great view and really the Landlord had no problem having a new tenant in place.

The Landlord provided further detail that set out there were showings of the rental unit approximately mid-month, they oversaw the moving in and moving out of this Tenant, and the move-out process interrupts normal elevator usage in this building. When Tenants move periodically, i.e., under one year, the cost is significant to the Landlord. The Landlord clarified that their claim is for the recovery of administration costs *only*.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The Residential Tenancy Branch has a set of *Residential Tenancy Policy Guidelines*. These are in place to provide a statement of the policy intent of the *Act*. On Liquidated Damages, Policy Guideline 4 provides: “The amount [of damages payable] 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.”

I find a framework for the liquidated damages clause in question – as set out above – is not in place. The clause does appear arbitrary and is not a genuine pre-estimate of loss. That is to say, the costs of each of advertising, interviewing, showings, administration, and re-renting are not established.

In sum, I find the liquidated damages clause is invalid in that it is punitive in nature. In line with the four points set out above, I find the true value of a loss involving re-renting the unit is not established, and this arbitrary one-half rent amount is not an effort at mitigating any monetary loss resulting from an early end of tenancy.

From the Landlord’s testimony I do see the impact the Tenant breaking the one-year fixed-term agreement has on the Landlord. It presents a substantial amount of work to the Landlord in terms of arranging for new tenants, making sure the rental unit is presentable, and facilitating a move-out process that includes reviewing the rental unit with the Tenant and having a legally valid Condition Inspection Report in place. This is a cost of time and money to the Landlord for which there should be recompense.

For this reason, I make an award of \$600 to the Landlord for their time and effort, with acknowledgement that the Tenant did break the tenancy agreement prior to its end. I make this award by application of s. 67 of the *Act*, where “the director may determine the amount of [damage or loss], and order that [non-complying] party to pay, compensation to the other party.” This is an instance where the Tenant did not comply with s. 45(2) of the *Act*.

I find the Landlord made their claim against the security deposit in a timely manner as set out in s. 38(1) of the *Act*. By s. 72(2) of the *Act*, I make the deduction from the security deposit held by the Landlord. Additionally, I grant the Application filing fee to the Landlord.

The Landlord must return the balance of the security deposit amount to the Tenant – this is \$112.50.

Conclusion

Pursuant to s. 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$112.50 for compensation set out above. The Tenant is provided with this Order in the above terms and must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: June 15, 2022

Residential Tenancy Branch