



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on March 21, 2022:

- to ensure the landlord's compliance with the legislation and/or the tenancy agreement,
- for compensation for monetary loss or other money owed to them,
- to reimburse the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on July 11, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Tenant stated they delivered notice of the dispute, along with their prepared documentary evidence, to the Landlord who confirmed receipt of the same. The Tenant also confirmed receipt of the Landlord's prepared evidence.

At the start of the hearing, both parties confirmed that their tenancy ended, and the Tenant moved out from the rental unit. This was the result of an Order of Possession from a prior dispute resolution hearing.

Given that the tenancy previously ended, there is no continuing landlord-tenant relationship. The Landlord's compliance with the legislation and/or the tenancy agreement is no longer in issue.

The Tenant raised their concern with the wording of the tenancy agreement as it existed between them previously. They made this Application prior to the tenancy ending. A tenant-initiated end-of-tenancy process prior to the end of a fixed term would result in the Landlord claiming for liquidated damages as set out in the agreement. Fundamentally the Tenant raised the issue of the Landlord requiring fixed-term tenancy agreement as opposed to month-to-

month that offer the Tenant more flexibility should they need to end the tenancy due to their own life circumstances.

Though only relevant to an existing tenancy, I note that liquidated damages are covered in the *Residential Tenancy Branch Policy Guidelines*, specifically policy guideline #4. Generally, such a clause can be the subject of a dispute resolution process, and the consideration will be whether it is a penalty (and unenforceable), or a true amount of liquidated damages based on a “genuine pre-estimate of the loss at the time the contract is entered into.”

The Tenant also added a claim for compensation for the set amount of that specified amount in the tenancy agreement; that is \$750. They clarified in the hearing this was a preventive measure to ensure no default \$750 penalty could be imposed by the Landlord should the Tenant choose to end the tenancy. Given that the Tenant confirmed they were not out-of-pocket for any expense or cost to them for this amount, I dismiss this piece of the Tenant’s claim, without leave to reapply. Also, the Landlord did not attempt to impose the liquidated damages clause in this situation; therefore I grant no compensation.

Given that the tenancy previously ended, there is no continuing landlord-tenant relationship. The landlord’s compliance and/or ability to enter the unit is no longer in issue. As the tenant did not withdraw their Application in light of the tenancy ending, I grant no repayment of the Application filing fee.

Conclusion

I dismiss the tenant’s Application, without leave to reapply. I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 12, 2022

Residential Tenancy Branch