



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on June 21, 2022, wherein the Landlord sought monetary compensation from the Tenant in the amount of \$1,050.00 representing liquidated damages, a move in fee and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on March 14, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for liquidated damages and a move in fee?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's representative testified as follows. He confirmed he is the owner of the property management company who is the agent for the Landlord, L.L.

The tenancy began November 1, 2021. Monthly rent was \$1,700.00 and the Tenant paid a security deposit in the amount of \$850.00. The tenancy was for a fixed one year term, following which the tenancy would continue on a month to month basis. The Tenant gave notice to end the tenancy on May 11, 2022 effective May 28, 2022. The tenancy ended May 28, 2022.

The Landlord sought the payment of liquidated damages pursuant to clause 4.16 of the tenancy agreement which provides as follows:

4.16 LIQUIDATED DAMAGES

If the tenant breaches a material term of this Agreement that causes the Landlord to end tenancy before the end of any fixed term, or of the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating and does vacate before the end of any fixed term, the tenant will pay to the Landlord the sum equivalent to one half month's rent as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the Landlord from claiming future rental revenue losses that will remain unliquidated.

The unit was re-rented as of June 1, 2022 for a total of \$1,800.00 per month. A.P. stated that the Landlord incurred the cost of \$900.00, which is half a month's rent and is the amount they charge the owners for finding a new tenant, performing the move in inspection, credit checks, etc. 16.

The Landlord sought the sum of \$100.00 for a move in fee which the Tenant failed to pay. This was included in the tenancy agreement by way of an Addendum 5.6 which provides as follows:

5.6 MOVE-IN FEE

Tenant is responsible for any move-in or move-out fees issued by the strata council.

The Tenant responded to the Landlord's claim as follows. The Tenant stated that he asked the Landlord why it was that he was charged a fee for re-renting the unit when people are "beating down the door" to rent a unit in the community in which rental unit is located and the unit was re-rented right away.

The Tenant stated that he was never informed of a move in fee while he lived there and claimed "it was all news to [him]" after he broke the lease. He noted that the invoice for the move in fee is also dated June 2022.

The Tenant stated he posted the unit for rent as a means to mitigate his losses and in response he had hundreds of people contacting him to rent the unit willing to pay as much as \$2,300-2,500.00 per month. The Tenant stated that he believes the Landlord was in a better position as a result of him breaking his lease as they rented it for more money than the Tenant was paying.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

I find the Tenant is responsible for paying the \$850.00 in liquidated damages pursuant to clause 4.16 of the tenancy agreement. A tenancy agreement is a contract and the parties are bound by the terms. In this case, the parties agreed to a 1 year fixed term and the Tenant agreed to pay half a month's rent in the event he ended his tenancy early, which he did. The evidence before me confirms the Landlord paid \$850.00 to their agents to secure new tenants, including advertising, showing the rental unit and performing credit checks. While the Landlord was able to secure a new tenant at a higher rent, this does not relieve the Tenant of honouring their contractual obligation to pay liquidated damages and to reimburse the Landlord for the expenses they incurred to secure a new tenancy. I find the liquidated damages to be a reasonable estimate of the expenses associated with finding a new tenancy, and not a penalty. I therefore find the Landlord is entitled to recover the **\$850.00** from the Tenant.

Similarly, I find the Tenant is responsible for paying the \$100.00 move in fee. Again the tenancy agreement, and in particular, clause 5.6 of the Addendum, provided the Tenant was to pay a move in fee. I accept the Landlord's evidence that the Tenant failed to pay this fee and I award them **\$100.00** as claimed.

As the Landlord has been successful in their Application I also award them recovery of the **\$100.00** filing fee for a total award of **\$1,050.00**. Pursuant to section 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$850.00 security deposit towards this amount and I grant the Landlord a Monetary Order for the balance due in the amount of **\$200.00**.

Conclusion

The Landlord's claim is granted in its entirety.

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: April 14, 2023

Residential Tenancy Branch