



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Is the landlord entitled to monetary compensation as claimed and to retain the tenant's security deposit?

Background & Evidence

The parties entered into a tenancy agreement on September 18, 2022. The tenancy was set to begin on October 15, 2022 and was for a fixed term of one year expiring on September 30, 2023. The monthly rent was \$1975.00. The tenant paid a security deposit of \$987.50 and a key fob deposit of \$100.00 at the start of the tenancy which the landlord continues to retain.

By way of an e-mail dated October 14, 2022, the tenant advised the landlord she would be cancelling the lease. The tenant never took possession of the rental unit. The tenant had paid rent for October 15-31, 2022.

The landlord is claiming \$1975.00. in liquidated damages as the tenant ended the fixed term tenancy early. The landlord submits the tenancy agreement signed by the tenant provides for liquidated damages to cover the administrative costs associated with re-renting the unit.

The landlord is also claiming loss of rent in the amount of \$650.00 for the month of November 2022 to September 2023. The landlord testified that the unit was re-rented starting November 1, 2022 but at a lower monthly rent of \$1910.00. A copy of the tenancy agreement with the new tenants was provided in support. The landlord also seeks to retain the rent paid for October 15-31, 2022.

The tenant did not dispute the liquidated damages or the landlord retaining the rent paid for October 15-31, 2022. The tenant disputed being charged for the loss of rent for the 10 month period of the new tenancy.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$1975.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

I find the amount of \$1975.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. The landlord provided a cost estimate for these charges which included advertising and costs of hiring a leasing manager. I find this amount is not extravagant and does not constitute a penalty. I award the landlord **\$1975.00** in liquidated damages as claimed.

The liquidated damages clause in the tenancy agreement further provides for the landlord to recover loss of rent which remains unliquidated. Accordingly, I find the landlord suffered a loss as claimed in the amount of \$650.00 as the new lease was for a lessor amount than what the landlord would have obtained under the one-year fixed term signed with the tenant. The landlord is awarded **\$650.00** as claimed.

I find the landlord would not have been able to re-rent the unit prior to November 1, 2022, therefore, the landlord is permitted to retain the rent that has been paid for the period of October 15-30, 2022.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$2725.00**.

The landlord continues to hold a security deposit and key fob deposit in the total of \$1087.50. I allow the landlord to retain the security deposit and key fob deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, the landlord is entitled to a monetary order in the amount of **\$1,637.50**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1,637.50**. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: July 25, 2023

Residential Tenancy Branch