



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Landlord filed an Application for dispute resolution on May 12, 2023, seeking compensation for monetary loss/other money owed, and recovery of the Application filing fee.

The Tenant filed an Application on May 19, 2023 for the return of their security deposit, and recovery of the Application filing fee. With the Landlord's Application already in place, the Tenant's Application was crossed to that of the Landlord.

The matter proceeded to a hearing as per s. 74(2) of the *Residential Tenancy Act* (the "Act") on December 1, 2023. Both the Landlord and the Tenant attended the hearing.

Preliminary Issue – Service of Notice of Dispute Resolution Proceeding and evidence

The Tenant provided a forwarding address to the Landlord at the end of the tenancy. The Landlord used this address for service of the Notice of Dispute Resolution Proceeding. They sent registered mail – twice, because of a postal code error – to the Tenant on May 17, 2023.

Though the Tenant stated they were away and did not receive the Landlord's notice, I find the Landlord completed service as required. I deem the Notice of Dispute Resolution Proceeding from the Landlord to be served on May 22, 2023, as per s. 90(a) of the *Act*.

The Landlord provided evidence to the Tenant in the same manner; therefore, I find the Landlord completed service of evidence as required and I give that evidence full consideration in this hearing.

The Tenant in the hearing described serving their Notice of Dispute Resolution Proceeding to the Landlord in person at the Landlord's place of business on June 12, 2023. The Landlord acknowledged this service. The Tenant did not provide evidence for consideration with their Application.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for monetary loss/other money owed?
- Is the Landlord entitled to recovery of the filing fee for their Application?
- Is the Tenant entitled to a return of the security deposit?
- Is the Tenant entitled to recovery of the filing fee for their Application?

Background and Evidence

The Landlord provided a copy of the tenancy agreement that was in place between the parties. The tenancy started on May 1, 2023 for a fixed term set to end on April 30, 2024. The monthly rent amount was \$2,400, and the Tenant paid a security deposit amount of \$1,200.

The agreement sets out, in paragraph 5, that there was a liquidated damages amount, as follows:

If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if 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 of \$1260 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Additionally, the tenant will pay any rental revenue or losses or damages caused by the early end of of [sic] the tenancy, and any other amounts owing to the landlord under this Agreement.

The Tenant described ending the tenancy prior to the start date. This was due to notice from their employer that they were going to be away for approximately one year. They notified the Landlord about this in advance; however, the Landlord wanted to negotiate on some terms regarding the end of the agreement. The Tenant simply stated they were not able to move in, and they referred another new tenant to the Landlord to the same address within May 2023.

The Landlord in the hearing confirmed this information. The early termination of this agreement was on April 26. The Tenant presented another new tenant to the Landlord for this rental unit on April 27. The Landlord proposed a “tenant’s finder’s fee” instead, in the amount of \$525, instead of the amount of liquidated damages as set out in the tenancy agreement.

The Tenant did not agree with this proposal, and reiterated their position that they wanted the security deposit returned to them in full.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

A liquidated damages clause in an agreement is a clause by which the parties agree in advance to damages payable in the event of a breach of the tenancy agreement. This amount must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause can be interpreted as a penalty, thereby being unenforceable.

I find the clause in question, reproduced above, is not a genuine pre-estimate of loss in the event of a breach by a tenant. It is not breach-specific, *i.e.*, not specific to the costs associated with a tenant ending the fixed-term tenancy early. There appears to be no gauge of an earlier or later ending of the tenancy by a tenant, for example. The costs unique to finding replacement tenants are not in place and not specified.

In actuality, in this instance I find there were no costs to the Landlord for re-renting the rental unit to a new tenant. The Tenant accommodated the Landlord in this regard; therefore, I find there was no loss to the Landlord.

For the reasons of the non-specific clause in the agreement, and the measures taken by the Tenant even prior to the commencement of the original agreement, I find the Landlord did not suffer a loss. I dismiss the Landlord's claim for compensation for this reason.

I order the Landlord to return the security deposit to the Tenant, in full. I grant a Monetary Order to the Tenant for this amount. There is no doubling of the deposit as per s. 38(6) of the *Act* because the Landlord made this Application within 15 days of the tenancy ending.

The Landlord was not successful in this Application; therefore, I grant no recovery of the Application filing fee. The Tenant was successful; therefore, I grant recovery of the fee and I add that amount to the Monetary Order.

Conclusion

I grant the Tenant a Monetary Order in the amount of \$1,300.

I provide the Tenant with this Monetary Order in the above terms and the Tenant must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant may file this Monetary Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

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: December 5, 2023

Residential Tenancy Branch