



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNDC MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on July 11, 2024. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each other’s application and evidence. I find all documents were sufficiently served.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of the security deposit?

Landlord:

- Is the Landlord entitled to compensation for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

The tenancy agreement provided into evidence shows that monthly rent was \$2,850.00, and was due on the first of the month. The tenancy agreement started on September 15, 2023, and was for a fixed term until February 29, 2024. The Tenant moved out on March 31, 2024. The Landlord stated that they hold a security deposit in the amount of \$1,425.00.

The Landlord is seeking \$2,850.00 in this application because the Tenant signed and agreed to the following term in the tenancy agreement:

Prematurely Ending a Periodic Tenancy

If the tenant intends to end a periodic tenancy while providing the landlord with less than one clear month's notice, the tenant will follow the following procedures:

- iii) The tenant will provide notice to the landlord, on the landlord's standard form, of the date the tenant will end the tenancy.
- iv) On the same day this notice is provided, the tenant will pay the landlord one month's rent as liquidated damages for a genuine pre-estimate of the losses which are likely to be suffered by the landlord for re-leasing fees charged by the landlord's agent to the property owner and for expected vacancy at the rental unit.

The Landlord noted that the Landlord has a property manager, who has many expenses (staffing, advertisement etc), which must be recovered in situations where short notice has been given. The Landlord stated that they did not receive the written notice from the Tenant until March 1, 2024, that she would be moved out by the end of March.

The Tenant confirmed that she sent an email to the Landlord on February 28, 2024, February 29, 2024, giving her 1 month notice she would be moving out. She also provided a physical copy to the Landlord on March 1, 2024. The Landlord denies receiving any of this until March 1, 2024, which means the Tenant did not give a full month's notice. The Landlord stated she was unable to re-rent the unit until May, although the Tenants question this.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The Landlord is seeking to recover the "liquidated damages" amount of \$2,850.00, since this is the amount the Tenant agreed to pay if she broke the lease. I note the Tenants

assert they sent their written notice to the Landlord on February 28, 2024, and February 29, 2024. However, I find it important to note that section 44 of the Regulations state that documents given by email are not deemed received until 3 days after they are sent. I find the Tenants were late giving notice via email, since this would have had to be sent no later than February 26, 2024, to be received by the end of the month. The evidence indicates that the Landlord did not receive the Tenant's forwarding address until March 1, 2024, which was less than one full month's notice, contrary to the Act, and the above noted addendum in the tenancy agreement. The Tenant clearly agreed to the above noted clause, where she would pay a liquidated damages amount if she did not give at least one full month's notice.

I note that Residential Tenancy Policy Guideline 4 provides for liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the Tenant. If a liquidated damages clause is determined to be valid, the Tenant must pay the stipulated sum unless the sum is found to be a penalty.

In this case, I find that the liquidated damages clause in the tenancy agreement is an enforceable term, as it is not extravagant compared to what rental losses could have been incurred following premature termination of the agreement. I find the amount of 1 month's worth of rent is not punitive, such that the clause is not enforceable. This term was agreed to up front. I award the full amount of this item, \$2,850.00.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. I award the recovery of this fee of \$100.00 to the Landlord. Further, I authorize the Landlord to retain the security deposit to offset what is owed. The Landlord holds \$1,453.97, which includes the applicable interest. A monetary order will be issued to the Landlord for the remaining amount outstanding, on top of the deposits.

The Tenant's application for the return of her deposit is dismissed, without leave, as is her request for the return of the filing fee. I note the Landlord filed their application against the deposit on April 12, 2024, which was within the acceptable time frame, and the Tenant is not entitled to double the security deposits.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,496.03**. This order must be served on the Tenant. If the Tenant fails to comply with

this order the Landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 11, 2024

Residential Tenancy Branch