Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Macdonald Commercial R.E.S. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the landlord's application to keep the security deposit in compensation of their monetary claim.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. The landlord's evidence demonstrated that they served the tenant with the application for dispute resolution and notice of hearing by registered mail on March 7, 2013. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I find that the tenant is deemed served with notice of the hearing on March 13, 2013.

The hearing was originally scheduled to be heard on May 31, 2013. However, there were technical difficulties with the teleconference system, and the hearing was rescheduled for June 7, 2013 at 9:30 a.m. The Residential Tenancy Branch informed both the landlord and the tenant of the rescheduled hearing, and sent both parties notices of the new time and date. I was satisfied that the tenant received notice of the rescheduled hearing, and I conducted the hearing in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit in compensation of their monetary claim?

Background and Evidence

The tenant first occupied the rental unit on August 1, 2007. On July 11, 2007 the tenant paid the landlord a security deposit of $1425. Each year, the landlord and tenant would enter into a new fixed-term tenancy agreement, and the security deposit would be carried over from the previous agreement.

The last tenancy agreement between the parties began on August 1, 2012 and was to expire on July 31, 2013. A clause in this agreement states that if the tenant ends the tenancy before the end of the fixed term, the landlord may treat the tenancy agreement as being at an end, and the tenant shall pay as liquidated damages "all administration costs of re-renting the said premises."

In January 2013, the tenant gave the landlord notice that he intended to vacate the rental unit on February 28, 2013. The landlord has applied for liquidated damages, as per the clause in the tenancy agreement, in the amount of $1425. In the hearing the landlord stated that their normal practice is to explain to the tenant at the time of signing the tenancy agreement that the liquidated damages amount is usually equivalent to half a month's rent, or the amount of the security deposit. The landlord could not say for sure whether that was done in this case.

Analysis

I find that the liquidated damages clause in the tenancy agreement is not valid, because it does not set out a specific amount. Liquidated damages are to be a genuine pre-estimate, agreed upon by the parties at the time of entering into the fixed-term tenancy agreement, of the costs of re-renting. I find that an unspecified amount cannot constitute a genuine pre-estimate. As the liquidated damages clause is invalid, the landlord's claim must fail.

As the landlord's application was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The landlord's application is dismissed.

The tenant is entitled to recovery of the security deposit and applicable interest. Accordingly, I grant the tenant an order under section 67 for the balance due of $1456.71. This order may be filed in the Small Claims 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: June 7, 2013

Residential Tenancy Branch