



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER HORIZON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing was convened in response to the landlord's application under the *Residential Tenancy Act* (the Act) for dispute resolution, seeking to retain the security deposit for loss under the Tenancy Agreement, the Act, or Regulations, as well to recover the filing fee.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Act the tenant did not participate in the conference call hearing. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy agreement began May 01, 2013 as a 1 (one) year fixed term tenancy ending April 30, 2014. The monthly rent payable was set at \$1275.00 per month. At the outset of the tenancy the landlord collected a security deposit of \$637.50 which the landlord retains in trust. The tenancy ended when the tenant vacated earlier than the end of the fixed term contract, on September 30, 2013. The landlord testified they accepted the tenancy was coming at an end and acted to avoid losses of revenue by advertising, showing the rental unit to prospective tenants and attending to the necessary administrative functions toward re-renting the unit. The landlord seeks to apply the security deposit to their claim for these costs as per the contractual Tenancy Agreement Addendum stating the parties' agreement the security deposit would be kept

by the landlord in the event the tenant should “break their lease” – effectively ending the tenancy earlier than contracted by the parties.

The landlord provided evidence of the signed Tenancy Agreement and Addendum in which the tenant confirmed by their initials and signature their agreement with the landlord’s term the tenant would forfeit the amount of the original security deposit only in the event the fixed term lease was *broken* prior to the conclusion of the fixed term.

The landlord testified the rental unit was subsequently re-rented for the month following the tenant vacating, but testified that despite this series of events the landlord incurred costs for which the amount of the security deposit is destined to cover. The landlord argues the tenant agreed to this condition and that the amount of the security deposit was known by the tenant.

Analysis

On preponderance of the undisputed evidence, I have reached a decision as follows.

A Tenancy Agreement is, effectively, a contract for a tenancy. I find the tenant signed the contractual Tenancy Agreement including confirming their consent to the landlord’s clause of how the security deposit of \$637.50 would be administered in the event the tenant ended the tenancy in the period of the fixed term of the contract - earlier than contracted. I do not find the amount to which the parties agreed to be extravagant. I accept the clause as a reasonable representation of costs for re-renting the unit. Given that the clause in the Addendum is restricted to within the period of the fixed 1 year term, I accept the parties in this matter intended for this clause to represent the same elements and the same intent as a clause for *liquidated damages* solely in the events stipulated in this agreement; and, not intended or agreed that the landlord could automatically keep the security deposit at the eventual end of the tenancy: as prohibited by Section 20(e) of the Act. As a result, I find the landlord has established a monetary claim for the retention of the security deposit and is further entitled to recover their filing fee of \$50.00.

Conclusion

I Order that the landlord may retain the **security deposit** of \$637.50 in its entirety, and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$50.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: January 22, 2014

Residential Tenancy Branch

