



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on May 1, 2013 and was to be for a fixed term that was to end on April 30, 2014, however the tenant moved out of the unit by October 31, 2013. The tenants were obligated to pay \$1250.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$625.00 security deposit and \$625.00 pet deposit. Those deposits were ordered returned in a previous hearing by another Arbitrator. The security and pet deposit have already been resolved and not subject of this hearing.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I address the landlord's claims and my findings around each as follows.

First Claim – The landlord is seeking \$100.00 for the move out fee that is imposed by the Strata. The tenant did not dispute this claim and agreed with the amount. Based on the above I find that the landlord is entitled to \$100.00.

Second Claim – The landlord is seeking \$2500.00 liquidated damages as per the addendum to the tenancy agreement. The landlord stated that the tenant “broke the lease” and is entitled to the amount.

The tenant disputes this claim. The tenant stated that she sought and received the landlords’ permission to end the tenancy. The tenant stated that it took the landlord only five days to re-rent the unit. The tenant stated that she was prepared to continue with the tenancy until such time as the landlord was able to find another tenant. The tenant stated that her e-mail correspondence and text messages submitted for this hearing clearly reflect an agreement and that the two parties were working together. I accept that the tenancy ended by mutual consent and that the landlord is not entitled to the amount as claimed but, even if I am wrong in that assertion, I address the landlords liquidated damages clause below.

The landlord stated that the \$2500.00 was a cost for his “time”. 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 tenancy agreement. Liquidated damages are an amount agreed to be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable as per the Residential Tenancy Policy Guideline. It’s clear that this was not a liquidated damages clause but a penalty clause. Based on all of the above I dismiss this portion of the landlords’ application.

Third Claim – The landlord is seeking \$2076.90 for the replacement of blinds, replacing a sink, replacing a fridge seal and repairing and staining the hardwood floors. The landlord stated that the tenant was responsible for this damage and that the condition inspection report supports his position. The landlord submitted a receipt dated October 23, 2013.

The tenant disputes this claim. The tenant questioned the validity of the receipt. The tenant stated that she was still living in the unit until October 28, 2013 and no repairs had been conducted. The tenant further stated that none of the items claimed by the landlord need to be addressed as she left the unit in very good shape.

I accept the version as submitted by the tenant. The landlords’ statement that “the tenant didn’t notice the repairs” defies logic. As for the condition inspection report; the tenant was adamant that it was not done at the move out inspection and the tenants’ mother gave testimony to support that position.

Based on the insufficient evidence before me I dismiss this portion of the landlords' application.

The landlord is entitled to the recovery of the \$50.00 filing fee.

Conclusion

The landlord has established a claim for \$150.00. I grant the landlord an order under section 67 for the balance due of \$150.00. 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: October 21, 2014

Residential Tenancy Branch

