



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, 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 a portion of the security deposit, as well to recover the filing fee.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to their claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant had benefit of an assistant. The assistant effectively presented the tenant's narrative respecting the issues in this matter.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence is that the tenancy agreement began September 02, 2014 as a 1(one) year fixed term tenancy ending August 31, 2015. The monthly rent payable was set at \$1100.00 per month. At the outset of the tenancy the landlord collected a security deposit of \$550.00 - of which the landlord retains \$350.00 in trust and has returned the balance. The tenancy ended when the tenant vacated earlier than the end of the fixed term contract, on September 30, 2014.

The landlord provided evidence of the signed Tenancy Agreement in which the tenant confirmed their agreement with the landlord's term claiming *Liquidated Damages* of \$350.00 if the tenant ended the fixed term tenancy early.

The tenant presented that they vacated because the rental unit was “filthy” from the outset of the tenancy and that some portions remained unclean subsequent to expending 6 hours cleaning the unit, and as such, they determined not to continue residing in the unit. The landlord presented the tenant agreed to the pre-estimate of liquidated damages amount.

Analysis

On preponderance of the evidence, including all oral evidence in this matter, I have reached a Decision as follows. All references to the presiding law or other publications respecting this matter may be found at www.gov.bc.ca/landlordtenant.

A Tenancy Agreement is, effectively, a contract for a tenancy. I find the tenant signed the contractual Tenancy Agreement lending their consent to the landlord’s clause for liquidated damages: the pre-estimate of costs for re-renting the unit in the event the tenant determined to end the tenancy earlier than the terms afforded by this contract.

Residential Tenancy Policy Guidelines respecting *Liquidated Damages* state that in order for a landlord’s claim of *Liquidated Damages* to be enforceable, their claim in the Tenancy Agreement must be a *genuine pre-estimate of loss at the time the contract is entered into*. If on claim the clause is determined to be a penalty it will not be enforceable. However, the Policy stipulates that if the *Liquidated Damage* clause is determined to be valid and not a penalty the tenant must pay the stipulated amount in the Agreement, even where the eventual actual costs do not amount to the pre-estimate, or *are negligible or non-existent* – as per the contract.

In this matter I find that the amount sought by the landlord is not extravagant in comparison to the greatest loss that would be incurred by the landlord to re-rent the unit in the event of a breach by the tenant. As a result, I accept the landlord’s evidence and I find the contract’s clause respecting *Liquidated Damages* is not a penalty and therefore enforceable, and effectively find the landlord’s claim is valid. Therefore, I find that the landlord has established a monetary claim for the *Liquidated Damages* in the amount of \$350.00. I further find that the landlord is entitled to recover their filing fee of \$50.00, for a total entitlement of **\$400.00**. The security deposit retained by the landlord will be off-set from the award made herein.

Conclusion

I Order that the landlord may retain the security deposit they hold of \$350.00, in partial satisfaction of the claim, 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: June 01, 2015

Residential Tenancy Branch

