



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for liquidated damages and the filing fee. The landlord applied to retain a portion of the security deposit in satisfaction of his claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for liquidated damages and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on April 01, 2015 for a fixed term of one year. The rent was \$1,455.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$725.00. The landlord filed a copy of the tenancy agreement which contains a clause regarding liquidated damages that states:

"If the tenant terminates the tenancy in less than 12 months, \$500.00 will be charged by the landlord and the tenant will pay this amount as a service charge for tenancy changeover costs such as advertising, interviewing, administration and re-renting. This is not a penalty."

On December 30, 2015, the tenant gave written notice to the landlord to end the tenancy effective January 31, 2016. The tenant explained in this letter that the reason for wanting to end the tenancy was that the landlord had indicated to her in November 2015, that she intended to sell the house.

The tenant added that due to the uncertainty of the situation and to ensure stable and safe housing for herself and her children, she started looking for alternative accommodation and found a place for January 31, 2016.

The landlord wrote a letter to the tenant dated December 31, 2015 reminding the tenant that terminating the tenancy prior to the end date of the fixed term would result in liquidated damages that the tenant would have to pay. The landlord explained that she was considering selling the house but had no intention of ending the tenancy prior to the end date of the fixed term.

The tenant wrote back to the landlord on January 13, 2016 expressing her disagreement with having to pay liquidated damages. The tenant provided her forwarding address in this letter.

The tenant moved out on January 31, 2016. The landlord made this application on February 12, 2016. The landlord is claiming \$500.00 for liquidated damages plus \$100.00 for the filing fee.

During the hearing, the tenant argued that the landlord did not incur any costs to re-rent as the landlord had not made any efforts to do so.

Analysis

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, 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.

Based on the testimony of the both parties and the documents filed into evidence, I find that that tenant did end the tenancy prior to the end date of the fixed term, thereby breaching the terms of the lease.

By signing the tenancy agreement, the tenant was fully aware of having to pay liquidated damages in the event that she ended the lease prior to the end date. Therefore, I find that the landlord is entitled to liquidated damages in the amount of \$500.00. Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$100.00.

The landlord may retain \$600.00 from the security deposit and must return the balance of \$125.00 to the tenant within 15 days of receipt of this decision. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$125.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$125.00.00.**

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: August 04, 2016

Residential Tenancy Branch