



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S/FFL

Introduction

The Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting a Monetary Order for Damages, to apply the Tenant's Security Deposit towards the claim, and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 17-minute hearing. The Landlord testified that he served the Tenant with the Notice of Hearing by sending it via registered mail. The Landlord provided me with the tracking number and I noted that the Tenant signed for the package on October 24, 2017. I find that the Tenant has been duly served with the Notice of Hearing in accordance with the Act.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Landlord be awarded Liquidated Damages to apply against the Tenant's Security Deposit?

Should the Landlord be compensated for the Filing Fee?

Background and Evidence

The Landlord provided the following undisputed testimony:

The Tenant entered into a Tenancy Agreement with the Landlord on December 1, 2016. This was a fixed-term tenancy that would have transitioned into a month-to-month tenancy on November 30, 2017. The monthly rent was established at \$1,275.00 and a \$637.50 security deposit was collected and held by the Landlord.

One of the terms of the Tenancy Agreement included a clause referring to Liquidated Damages. Clause #5 referred to the circumstances where the Tenant prematurely ends the fixed term tenancy; the Tenant will pay the Landlord the equivalent of their security deposit amount as Liquidated Damages and not as a penalty. Liquidated Damages, according to the agreement, are an agreed pre-estimate of the Landlord's costs of re-renting the unit. On the submitted copy of the tenancy agreement, it shows that the Tenant initialled beside Clause #5.

The Landlord testified that the Tenant notified the Landlord that he would be ending the tenancy early and moving out of the rental unit by September 30, 2017. The Landlord arranged for a new tenant to move into the rental unit on October 1, 2018. The Landlord stated that he would have received the forwarding address for the Tenant when the notice to end the tenancy was provided to the Landlord.

The Landlord stated that he met with the Tenant in October of 2017 and advised him that he, the Landlord, would be making an Application for Dispute Resolution to claim the security deposit against the Liquidated Damages. In response, the Tenant stated that he would not dispute the claim.

The Landlord acknowledged that he did not suffer any loss from unpaid rent or damages to the rental unit.

Analysis

Section 38(1) of the Act directs the Landlord to return a Tenant's security deposit within 15 days after the later of the date the tenancy ends and the date the Landlord receives the Tenant's forwarding address in writing. As the tenancy between the Landlord and the Tenant ended on September 30, 2017 and the Landlord applied for Dispute Resolution on October 10, 2017, I find that the Landlord withheld the Tenant's security deposit as allowed under the Act.

Section 67 of the Act authorizes me to order a party to pay compensation to the other party if I determine that damage or loss resulted from a party not complying with the Act or the Tenancy Agreement. As the undisputed testimony indicates, the Tenant ended the fixed-term tenancy two months early and as such, breached the fixed term portion of

the Tenancy Agreement, which entitles the Landlord to receive the Liquidated Damages, noted in clause #5. I find that the Landlord is due compensation for the costs of re-renting the rental unit.

As the Landlord was successful in his claim, I authorize the Landlord to be compensated for the Filing Fee. The Landlord may keep \$100.00 of the Tenant's Security Deposit towards the Filing Fee.

After the deduction of the Filing Fee, the balance of the Tenant's Security Deposit is \$537.50. This amount should adequately compensate the Landlord, who has not suffered any other losses, and can be applied to the Landlord's Liquidated Damages claim.

| Item | Amount |
|--|-----------------|
| Landlord compensation for Filing Fee | \$100.00 |
| Landlord Liquidated Damages | <u>537.50</u> |
| Tenant's Security Deposit – retained by Landlord for Liquidated Damages and Filing Fee | \$637.50 |

Conclusion

I order that the Landlord retain the Tenant's Security Deposit of \$637.50 as compensation for Liquidated Damages and the cost of the Filing Fee for the Application for Dispute Resolution.

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: May 11, 2018

Residential Tenancy Branch