



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NVISION PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Code MND, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 14, 2017, and was successfully delivered. A Canada post tracking number was provided as evidence of service.

I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on June 16, 2017 and was to expire on May 31, 2018. Rent in the amount of \$880.00 was payable on the first of each month. The tenant paid a security deposit of \$440.00. The tenancy ended on September 30, 2017. Filed in evidence is a copy of the tenancy agreement.

The landlord's agent testified that the tenant breached the fixed term tenancy agreement by vacating early. The agent stated that the tenancy agreement has a liquidated damages clause. The clause stated that if the tenant breaks the fixed term earlier than the specified date in the agreement that the landlord is entitled to recover the amount of \$880.00. The agent stated this is not a penalty that is based on the multiple showings, interviews, and credit reports to ensure they obtain the best tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the undisputed evidence of the landlord that the tenant breached the fixed term agreement by ending the tenancy on September 30, 2017. I find the tenant breached the Act, as the earliest date the tenant could have legally ended the tenancy was the May 31, 2018, the date specified in the tenancy agreement.

I have reviewed the tenancy agreement; the agreement provided that if the fixed term agreement was breached that the landlord was entitled to recover liquidated damages in the amount of \$880.00. The agent confirmed this was not a penalty it was based on

the cost of re-renting the premises. I find the landlord is entitled to recover the liquidated damages as set out in the tenancy agreement in the amount of **\$880.00**.

I find that the landlord has established a total monetary claim of **\$980.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$440.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$540.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 07, 2018

Residential Tenancy Branch