



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL

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 losses, permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

Both the Landlord and Tenants attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. The Landlord and the Tenant were each affirmed to be truthful in their testimony.

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 is described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed they signed a one-year fixed term tenancy that began on May 1, 2022. Rent in the amount of \$1,700.00 was payable on the first of each month, and the Tenants paid a security deposit of \$850.00 at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement with five-page addendum into documentary evidence.

Both parties agreed that the Tenants ended this tenancy early when they gave notice to end the tenancy as of June 30, 2022. The parties agreed that the Tenants vacated the rental unit on June 30, 2022.

The Landlord testified that they were able to secure a new renter for the rental unit as of July 15, 2022, and that they are seeking to recover their lost rental income of a half month's rent for the first half of July 2022.

Landlord also testified that they are claiming for the \$850.00 in liquidated damages that was contracted to in the tenancy agreement due to the Tenants ending the tenancy before the end of the one-year fixed term. The Landlord referenced section 4 of the addendum to the tenancy agreement to support this section of their claim.

The Tenant testified that they agreed they did end this tenancy early but that they had to due to an infestation in the rental unit that was not dealt with by the Landlord.

The parties agreed that a mutual agreement to end tenancy was not signed between the parties.

Analysis

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

I find that the parties entered into a one-year fixed term tenancy, beginning on May 1, 2022, in accordance with the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the tenancy could not have ended in accordance with the *Act* until April 30, 2023. I find that the Tenants failed to comply with the *Act* when they issued notice to the Landlord to end his tenancy as of June 30, 2022.

I accept the Landlord's testimony that they took steps to secure a new renter for the rental unit as soon as possible and that they were able to find a new renter for the rental unit as of July 15, 2022. Therefore, I find that the Landlord suffered a loss in rental income of a half month's rent for July 2022. Consequently, I award the Landlord the recovery of their lost rental income in July 2022, in the amount of \$850.00. I grant permission to the Landlord to retain the security deposit they are holding for this tenancy in full satisfaction of this award.

The Landlord has also claimed for liquidated damages, the Residential Tenancy Policy Guideline # 4 speaks to liquidated damages. It states:

"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. The amount agreed to must 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. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally, clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause, if struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.”

I find the sum of half a month’s rent for the liquidated damages charge in the tenancy agreement to be a genuine pre-estimate value of the loss incurred by the Landlord, following the Tenants’ breach of this tenancy agreement. Therefore, I award the Landlord the contracted amount of \$850.00, the equivalent of a half-month rent in liquidated damages to this tenancy.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$950.00. The Order is comprised of \$850.00 in lost rental income, \$850.00 in liquidated damages, and \$100.00 in the recovery of the filing fee paid for this application, less \$850.00 that the Landlord holds in a security deposit for this tenancy.

Conclusion

I find for the Landlord pursuant to sections 67 and 72 of the Act.

I grant the Landlord a **Monetary Order** in the amount of **\$950.00**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: April 28, 2023

Residential Tenancy Branch