

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to recover loss of income and cleaning costs?

Background and Evidence

The parties agreed that the tenancy began in February 28, 2008. The tenant is 18 years old and rented a room from the landlord as a sub-tenant as the landlord is herself a tenant. The parties further agreed that the tenancy agreement provided that the rental rate was \$450.00 per month and that a security deposit of \$225.00 was paid on March 5, 2008.

On or about September 9, 2008 the landlord gave the tenant a letter stating that he had to vacate the rental unit within 10 days or be escorted from the unit by the police if he failed to vacate. On or about September 23 the tenant verbally told the landlord that he would be vacating the rental unit at the end of the month. The tenant moved the last of his belongings from the rental unit on October 2, 2008. The tenant testified that he vacated the rental unit pursuant to the landlord's letter. The landlord argued that the tenant should not have vacated until he had received a notice to end tenancy under the

Act.

The landlord testified that the tenant did not properly clean the rental unit at the end of the tenancy and that she spent approximately 2 hours cleaning the room and the areas of the kitchen he had used. The tenant responded that he did not clean because the landlord's boyfriend had threatened and intimidated him. The landlord denied that any threats were made but acknowledged that there was a verbal altercation between the tenant and her boyfriend. The landlord further testified that the tenant failed to clean the carpets in his room when he vacated. Specifically, the landlord testified that the tenant had a kitten in the rental unit for 7 weeks and that there was a stain in the closet carpet where the litterbox had been in addition to another stain in the room. The tenant testified that he had no knowledge of any stains and that the stain in the closet did not appear to have been made by cat urine or feces.

The landlord seeks lost income for the month of October on the basis that the tenant failed to provide proper notice that he was vacating the rental unit. The landlord also seeks \$15.00 for each of the two days in October in which the tenant's belongings were in the rental unit. The landlord also seeks \$40.00 as the cost of cleaning the rental unit and \$45.00 as the cost of shampooing the carpet.

Analysis

I begin by noting that although the tenant is under the age of majority, section 3 of the Act specifically provides that the Act applies to tenancy agreements with a minor. I further note that although the tenant and landlord shared a kitchen and bathroom, the landlord does not own the rental unit and therefore section 4(c) of the Act will not operate to exclude this tenancy from the jurisdiction of the Act. I find that I have jurisdiction to make a determination with respect to this tenancy.

Although the Act provides that a landlord must provide a notice to end tenancy in the approved form in order to evict a tenant, given the circumstances surrounding the landlord's letter of September 9 and the fact that the tenant is a minor and unsophisticated in tenancy matters, I find that the tenant acted reasonably in vacating the rental unit pursuant to the landlord's letter and find that the landlord is estopped

from claiming loss of income for October as I find that she is the party who ended the tenancy. The landlord's claim for loss of income for October is dismissed.

As the tenant overheld the rental unit for two days in October, a period for which he paid no rent, I find it reasonable to award the landlord \$14.52 per day, prorated from the \$450.00 which would have been payable for the 31 day month, and award the landlord \$29.04 for those two days.

Although the tenant claimed that he could not clean because of threats and intimidation by the landlord's boyfriend, there is no evidence that the tenant reported these threats to the police or that the alleged threats prevented the tenant from moving his belongings. I am not satisfied that the landlord's boyfriend intimidated the tenant to the point that he was afraid to perform a final cleaning of the unit. I find that the landlord is entitled her cleaning costs and I find the \$40.00 charge to be reasonable. I award the landlord \$40.00 for cleaning.

I am satisfied that the landlord is entitled to the cost of cleaning the carpets. I do not accept the tenant's argument that no stains were made on the carpet, particularly as one of the stains was in the same area as the litterbox. While the stain may not have been created from cat urine or feces, kitty litter could easily have created the stain. I find the landlord is entitled to recover \$45.00 for carpet cleaning and I award the landlord that sum.

Conclusion

I find that the landlord has established a claim for \$114.04 which represents \$29.04 for overholding, \$40.00 for cleaning and \$45.00 for carpet cleaning. I order that the landlord retain \$114.04 from the deposit and interest of \$227.51 in full satisfaction of the claim and I order the landlord to return the balance of \$113.47 to the tenant forthwith. I grant the tenant an order under section 67 for the balance due of \$113.47. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: December 01, 2008.

