



Dispute Resolution Services

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

Decision

Dispute Codes: MNR MNSD FF

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 the landlord and the tenant participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for lost revenue?

Background and Evidence

The tenancy began on November 1, 2008, with monthly rent in the amount of \$1000 payable in advance on the first day of each month. On October 14, 2008, the landlord collected a security deposit from the tenant in the amount of \$500. The rental unit still required repairs, but the tenant agreed to rent the unit in its unrepaired condition, with the understanding that the landlord would complete the repairs. There was no written tenancy agreement. On November 27, 2008 the tenant gave the landlord a letter stating that she was moving out on November 29, 2008 because of the deficient condition of the rental unit. Those deficiencies included: no cover on the kitchen stove fan; improper or lack of covers on outlets; holes in the walls, some with wires in them and one of which the tenant alleged was a “live wire” that “electrocuted” her when she brushed her leg against it; and no deadbolt on the door connecting the rental unit and the upstairs of the house. The tenant vacated on November 29, 2008.

The landlord’s evidence was that beginning on November 29, 2008, she began advertising to re-rent the unit for December 1, 2008. From November 30, 2008 to

December 2, 2008, the landlord completed all of the repairs that the tenant listed in her letter. The landlord got some responses to the rental ad, but everyone was looking for something for January. The landlord was not able to re-rent until January 1, 2009, and the landlord therefore claims \$1000 in lost revenue for December 2008.

The tenant's evidence was as follows. The tenant acknowledged that she did agree to rent the unit "as is," but the landlord did nothing to correct the deficiencies. The tenant believed that because of the deficiencies, and the landlord's unwillingness to correct them, the tenant was within her rights to vacate the unit.

Analysis

In most cases, tenants are required to give at least one full month's notice of their intention to vacate, and if they do not do so they may be held responsible for the landlord's lost revenue for the following month. A tenant may in limited circumstances end the tenancy early without full notice to vacate, if the landlord has materially breached the tenancy agreement. If the landlord has not materially breached the tenancy agreement but a rental unit requires repairs, a tenant may apply to the Residential Tenancy Branch for orders that the landlord conduct repairs or emergency repairs, or orders for a reduction in rent or monetary compensation. If a landlord claims loss of revenue, the landlord must show that they have taken reasonable steps to attempt to re-rent the unit as soon as possible.

In this case, I find that the landlord's failure to immediately address the deficiencies in the rental unit do not constitute a material breach of the tenancy agreement. Therefore, the tenant was required to give proper notice to vacate. I am satisfied that the landlord took reasonable steps to attempt to re-rent as soon as possible but they were unable to re-rent for December 2008 because prospective tenants were looking for something for January. I further find that the repairs that the landlord carried out between November 30, 2008 and December 2, 2008 would not have prevented the landlord from re-renting, as the tenant herself was willing to rent it in its unrepaired condition.

I find that the landlord has established a claim for \$1000 in lost revenue for December 2008. The landlord is also entitled to recovery of the \$50 filing fee.

Conclusion

I order that the landlord retain the deposit and interest of \$501.62 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$508.38. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated February 6, 2009.