



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application from the landlord for a monetary order as compensation for loss of rental income, recovery of costs incurred for cleaning the unit, an order to retain the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. Both parties participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to retention of the security deposit and a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on February 1, 2008. Rent in the amount of \$1,500.00 was payable in advance on the first day of each month. During the hearing the parties agreed that a security deposit of \$750.00 was collected one week before the start of tenancy which I find was January 25, 2008. A move-in condition inspection report was completed and signed by both parties at the outset of tenancy.

By way of e-mail sent on December 5, 2008, and then again on December 8, 2008, one of the tenants informed the landlord of their intent to vacate the unit “as of the first of January, 2009.” This e-mail was followed up with an undated letter to the same effect from the tenant to the landlord. Subsequently, the landlord claims that new renters

were unable to be found to occupy the unit before February 1, 2009. Accordingly, the landlord seeks compensation for loss of rental income for the month of January 2009.

A move-out condition inspection was undertaken at the end of tenancy. On the move-out condition inspection report it is documented that some cleaning in the unit was required, and the landlord's agent estimated on the report that the cost for cleaning would be in the amount of \$50.00. The landlord submitted pictures into evidence in support of this claim. While the move-out condition inspection report was signed by the landlord's agent, it was not signed by either tenant. Nevertheless, during the hearing the tenants did not dispute that some cleaning was required after they had vacated the unit. During the hearing the landlord indicated that actual costs incurred for cleaning more closely approximated \$120.00.

Analysis

Section 44 of the Act broadly addresses **How a tenancy ends**, and states in part:

44(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

Section 45 of the Act speaks to **Tenant's notice**. In particular, section 45(1)(a)(b) states:

45(1) A tenant may end a periodic 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, and

(b) 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.

Based on the documentary evidence and testimony of the parties, I find that the tenant's notice to end tenancy failed to comply with the above statutory provision. Further, I find that while the landlord made attempts to mitigate the loss of rental income by advertising the unit and by making efforts to show the unit to interested parties, the unit remained vacant all of January and new renters were not found until February 1, 2009.

As for costs incurred for cleaning, I find on the basis of the affirmed and undisputed testimony that the landlord has established a claim of \$50.00. This is the amount estimated and documented at the time of the move-out condition inspection. While the landlord stated during the hearing that actual costs were closer to \$120.00, no mention of this was made to the tenants / respondents in advance of the hearing and no documentary evidence, such as receipts, was presented in support of this higher claim.

In sum, as for the monetary order, I find that the landlord has established a claim of \$1,600.00. This is comprised of loss of rental income of \$1,500.00 for January 2009, costs of \$50.00 incurred for cleaning the unit, and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$750.00 plus interest of \$10.51, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$839.49 (\$1,600.00 - \$760.51).

Conclusion

I hereby grant the landlord a monetary order under section 67 of the Act for **\$839.49**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 13, 2009

Dispute Resolution Officer