

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 parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

When did the tenants give the landlord their notice to end the tenancy?

Is the landlord entitled to a monetary order as requested?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2008 and ended on December 31, 2008. The parties further agreed that the landlord collected a \$550.00 security deposit on June 25, 2008. The tenants testified that on November 28, the tenant Y.F. went to the landlord's office with two envelopes. One envelope contained their one month notice to end the tenancy dated November 31 and effective December 31 (the "Notice") and the other envelope contained their rent for the month of December in cash. The parties agreed that the landlord and Y.F. counted the cash together and the landlord issued a receipt. Y.F. testified that he left the envelope containing the notice on the desk and did not mention it to the landlord. The landlord testified that she did not receive the notice in November.

In the month of December the parties had discussions about the fact that the tenants' roommate had moved out and the tenants needed to find a less expensive unit. The landlord showed the tenants a bachelor's suite and a one-bedroom unit, both of which the tenants determined would not meet their needs.

The tenants testified that they purposely dated the notice for what they believed was the

last day of November and forgot that November had only 30 days and that they did so because they knew notice had to be given on the day before rent was due.

The landlord acknowledged that the tenants had given verbal notice, but insisted that she had not received the notice which was allegedly given in November. The landlord testified that when the tenants set up a time to do a condition inspection report at the end of December, the landlord told them she had not received written notice at which time Y.F. told her that he had given her written notice in November. The landlord suggested that the fact that the notice was dated November 31, a day which doesn't exist on the calendar, shows that the notice was either manufactured after the fact or written after November 30. When asked what efforts she had made to re-rent the unit, the landlord testified that advertisements ran throughout January but the unit was not re-rented until February.

The parties agreed that the landlord was entitled to deduct from their security deposit \$30.00 for the cost of cleaning drapes and when the tenants were made aware that their tenancy agreement provided that they have the carpets professionally cleaned, they agreed that the landlord was entitled to deduct a further \$60.00 for that cost.

Analysis

Tenants who wish to vacate a rental unit are required to give one full month notice to the landlord. Section 88(b) of the Act provides that to serve a notice, the tenant can leave a copy with the landlord's agent. I accept the tenants' testimony that Y.F. brought the notice to the landlord's office on November 28. I have arrived at this conclusion because the tenants retained a copy of the notice which they were able to instantly produce for the landlord in December even though they did not have a printer available to them at that time. However, even if I had accepted that the landlord did not receive notice in November I still would have questioned the landlord's claim because I find that the landlord failed to act appropriately to mitigate her losses. The verbal communication which took place between the landlord and tenants throughout December should have spurred the landlord on to advertising in the month of December. However, the landlord did not begin advertising until after the tenants had vacated the rental unit. For the above reasons, the landlord's claim for loss of income for January is dismissed.

The landlord is entitled to retain \$90.00 from the security deposit to pay for carpet and drape cleaning. I find that the landlord must bear the cost of the filing fee as it is likely the tenants would have agreed to the fees for cleaning of carpets and drapes had the landlord taken the time to point out the appropriate provisions in the tenancy agreement.

Conclusion

I order that the landlord retain \$90.00 from the security deposit and I order the landlord to return the balance of \$464.28 to the tenants forthwith. I grant the tenants an order under section 67 for \$464.28. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 10, 2009.
