

Dispute Resolution Services

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

Decision

Dispute Codes: O, MNDC

Introduction

This hearing dealt with an application by the tenant for an acknowledgment that the rental unit was uninhabitable and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing and had opportunity to be heard.

At the hearing the landlord's agent (the "Agent") advised that the property management company which had been named as a respondent in the tenant's application and as the applicant in the landlord's application, no longer existed and that the rental unit was being managed by a different company. The parties agreed to substitute the new property management company as respondent and applicant in the respective applications. The style of cause in this decision has been changed accordingly.

The Agent also asked to amend his claim to include a claim for unpaid Terasen Gas bills. The tenant agreed to the amendment.

Issue(s) to be Decided

Should the tenant be held responsible for rent or loss of income beyond January?

Background and Evidence

The undisputed facts are as follows. The tenancy began on December 15, 2008 at which time a \$600.00 security deposit was paid. The tenancy was set for a fixed term and set to expire on April 1, 2009 and monthly rent was set at \$1,200.00. The tenant encountered numerous repair issues during the course of the tenancy and verbally brought these to the attention of the Agent. The tenant did not put his complaints in writing. The tenant paid \$700.00 in rent in the month of January. On or about January 11 the tenant advised the Agent that he would be vacating the rental unit at which time

the Agent offered to allow the tenant to vacate the premises and stated that \$500.00 of the security deposit would be applied toward unpaid rent for January and the remaining \$100.00 returned to the tenant. The parties completed a condition inspection of the unit on or about January 15.

The Agent testified that although he told the tenant he could vacate and \$100.00 of his security deposit would be returned, he later discovered that the owner did not agree. The landlord claims \$500.00 in unpaid rent for January and \$1,028.00 in loss of income for February, up until February 25 which is the date new tenants moved into the unit, as well as \$643.37 in Terasen Gas bills which covered the period from December 15, 2008 – February 5, 2009.

The tenant agreed that the landlord was entitled to recover \$500.00 in unpaid rent for January and further agreed that the landlord was entitled to recover the amount billed by Terasen Gas.

Analysis

A fixed-term tenancy may only be ended prior to the end of the fixed term by agreement of both parties or, pursuant to Section 45(3) of the Act, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure. In these circumstances, I find that the representation made by the Agent on January 11 when the Agent told the tenant he could move out and would be refunded \$100.00 of his security deposit amounted to an agreement to end the tenancy early. The owner is bound by the representations of his Agent. I find the landlord is not entitled to recover lost income for February and I dismiss that part of the landlord's claim.

I award the landlord \$1,143.37 which represents \$500.00 in unpaid rent for January and \$643.37 in Terasen Gas bills. I order that the landlord retain the deposit and interest of \$600.44 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$542.93. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I decline to make a declaration that the rental unit is uninhabitable as I find it is

unnecessary given the outcome of the landlord's application.

Conclusion

The landlord is granted an order for \$542.93. The tenant's application is dismissed.

Dated March 25, 2009.