

Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNDC, 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. The tenant is deceased and the landlord is claiming against the tenant's estate. The landlord testified that the executor of the estate provided his contact information and it was to this address that the landlord sent the notice of hearing and application for dispute resolution by registered mail on February 16. The executor did not participate in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord provided evidence that the tenancy began in September 1, 2008 and was set to run for a fixed-term of 6 months, ending on February 28, 2009. The landlord provide a copy of the tenancy agreement which showed that rent was set at \$2,600.00 per month and that a \$1,300.00 security deposit was collected on August 27, 2008. The rental unit was fully furnished. The tenancy agreement contained the following liquidated damages provision.

If the tenant ends the fixed term tenancy before the original term as set out in **2. Length of Tenancy in Residential Tenancy Agreement**, the landlord may treat this Agreement as being at the end. In such event, the sum of \$2,600 (one month rent) plus additional \$200 for each remaining month until February 28 of 2009 (due to the fixed rental amount of \$2,600 per month minimum 6 month term or \$2,800 per month if less then [sic] 6 month term) will be paid by the tenant to the landlord as liquidated damages, and not as penalty, to cover the administration costs of re-renting the rental unit. The landlord and tenant acknowledged and agree that the payment of liquidated damages will not preclude that landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damage to the rental unit or

residential property and damages as result of lost rental income due to tenant's breach of any term of this Agreement.

The landlord testified that in early January he was advised by the tenant's son that the tenant had passed away. The landlord testified that the tenant's belongings were removed but the rental unit was not completely cleaned. The landlord further testified that he spent a full day cleaning the rental unit and the carpets and that the television was not working at the end of the tenancy. The landlord did not have the television repaired and did not have an estimate as to its value. Although the landlord testified that he rented a steam cleaning machine, he did not provide an invoice showing the cost of that machine.

The landlord testified that he was able to re-rent the rental unit for February 1, but at a rate of \$2,200.00 per month. The landlord claims the \$400.00 difference in rent between the \$2,600.00 the tenant was paying and the \$2,200.00 the new tenants paid for the month of February. The landlord also claims \$500.00 as the cost of cleaning the rental unit and repairing the television and a further \$2,800.00 in liquidated damages.

Analysis

Although the tenant was obligated to fulfill the terms of the tenancy agreement until the end of February 2009, I find that the contract was frustrated by the tenant's death.

Residential Tenancy Policy Guideline states as follows:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

As the tenancy was frustrated, I find that the tenant was discharged from fulfilling his obligations under the tenancy agreement and therefore cannot be held liable either for liquidated damages or for the \$400.00 difference in rent. Those claims are dismissed.

As for the charges for cleaning and TV repairs, the landlord is obligated to prove both liability and the quantum of his claim. I accept that the landlord was unable to provide

invoices for cleaning that he performed himself and find it reasonable to award the landlord compensation for 10 hours of cleaning at a rate of \$15.00 per hour for a total of \$150.00. The remainder of the landlord's claim for rental of the carpet cleaning machine and TV repair is dismissed as the quantum of the claim was unproven.

As the landlord has been only partially successful in his claim, I find it appropriate to award him recovery of one half, or \$25.00, of the filing fee.

Conclusion

The landlord is granted an award for \$175.00 which represents \$150.00 for cleaning and \$25.00 for the filing fee. I order that the landlord retain \$175.00 from the deposit and interest of \$1,306.77 in full satisfaction of the claim and I order the landlord to return the balance of \$1,131.77 to the tenant forthwith. I grant the tenant an order under section 67 for \$1,131.77. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 27, 2009.
