



Dispute Resolution Services

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

Decision

Dispute Codes: MND MNR MNDC MNSD FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for a monetary order and an order to retain the security deposit in partial compensation of the monetary claim. The tenant applied for double recovery of the security deposit. Two agents for the landlord and the tenant participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to double recovery of the security deposit?

Background and Evidence

The tenancy began on January 1, 2009, with monthly rent of \$1000. At the outset of the tenancy the landlord received from the tenant a security deposit of \$500. The tenant was also hired by the landlord at the outset of the tenancy as a caretaker for the building. The tenancy agreement contains a clause that states as follows: "This unit is the caretaker's unit for the building." On March 19, 2009 the landlord served the tenant with two documents, the first of which was a letter stating that, effective immediately, the tenant's services as a caretaker were no longer required, and the second of which was a one month notice to end tenancy for end of employment. The effective date of the notice to end tenancy was April 30, 2009. On March 31, 2009 the tenant requested that the landlord attend her unit to conduct a move-out inspection. The tenant vacated the rental unit on March 31, 2009.

The landlord's evidence was as follows. After the tenant moved out the suite required cleaning, and the landlord has claimed \$100 for that work. The tenant did not provide the landlord with any notice that she was vacating the suite on March 31, 2009. The tenant did not pay rent for April 2009. The landlord signed a contract with a new caretaker during April, but the tenancy for the new caretaker did not begin until May 1, 2009. The landlord has claimed \$1000 for loss of revenue for April 2009. The landlord made their application for the monetary amounts and an order to retain the security deposit as partial compensation for the claim on April 15, 2009.

The tenant's evidence was as follows. The tenant accepted that the landlord was entitled to the \$100 claimed for cleaning. The tenant disputed the landlord's entitlement to lost revenue for April, on the basis that the tenant was doing the landlord a favour by vacating the unit early and making it available for the next caretaker. The tenant submitted a newspaper ad dated three days after the tenant was fired, in which the landlord sought a new caretaker "ASAP." The tenant has applied for double recovery of her security deposit, in the amount of \$1000.

Analysis

In regard to the landlord's claim, I find the following. The tenant acknowledged that the landlord is entitled to cleaning costs, and I therefore grant the landlord's claim of \$100 for cleaning. In regard to lost revenue for April 2009, the tenant had an obligation to give the landlord notice and she failed to do so. The landlord took all reasonable steps in the circumstances to mitigate their loss, and the tenant is therefore responsible for the landlord's loss. I therefore also grant the landlord \$1000 for lost revenue. As the landlord was successful in their claim, they are entitled to recovery of their \$50 filing fee, for a total claim of \$1150.

In regard to the tenant's claim, I find the following. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the

security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. In this case, the tenancy ended on March 31, 2009 and the tenant provided her written forwarding address on the same date. The landlord made an application to retain the security deposit on April 15, 2009. As the landlord made the application within the required time frame, the provisions of section 38 do not apply. As the landlord was successful in their monetary application and the security deposit will be applied to their claim, no balance of the security deposit remains to be returned to the tenant. The tenant's application is therefore dismissed. The tenant is not entitled to recovery of her filing fee.

Conclusion

The application of the tenant is dismissed.

I order that the landlord retain the security deposit of \$500 and I grant the landlord an order under section 67 for the balance due of \$650. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 17, 2009.