



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 by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord and both tenants participated in the teleconference hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on October 20, 2008 as a fixed term lease through to October 31, 2009, with monthly rent of \$1700. At the outset of the tenancy the tenants paid the landlord a security deposit of \$850. The rental unit is a strata unit. Section 146 of the *Strata Property Act* requires that landlords give prospective tenants a copy of the strata's current bylaws and rules. The strata in which the rental unit is located requires that if the owner wishes to rent the unit, she must put the unit on a waiting list and receive permission to rent it, or face fines. The strata also charges move-in and move-out fees of \$75.

The landlord's evidence was as follows. On February 1 or 2, 2009 the tenants emailed the landlord to inform her of their intention to vacate the rental unit by March 1, 2009. The landlord and the tenants both advertised the unit on the internet, but the landlord did not receive any responses to her ad on Kijiji. On February 20, 2009 the landlord signed a tenancy agreement with a new tenant, for a tenancy to begin on March 1, 2009

with monthly rent of \$1400. The landlord acknowledged in the hearing that she did not have permission in October 2008 to rent the unit, and as a result she incurred strata fines. The landlord paid those fines herself. The landlord also did not have permission to rent to the new tenant beginning in March 2009, and the strata is now levying further fines against the landlord beginning March 2009.

The landlord has claimed monetary amounts against the tenants as follows:

- 1) \$2400 for lost revenue of \$300 per month for 8 months, to the end of the tenants' lease
- 2) \$3850 for fines levied against the landlord for unauthorized renting to the new tenant
- 3) \$150 for move-in and move-out fees when the tenants broke their lease and the new tenant moved in
- 4) \$79.49 for repairs to a patio door

The response of the tenants was as follows. At the time that the landlord signed the lease with the new tenant, the tenants were still trying to show the unit and get a higher rent. Further, the landlord told the new tenant that she could sue the old tenants for the difference in rent, and the new tenant manipulated the situation to secure a lower rent. The landlord knew about strata fines for unauthorized renting because of the fines that were levied against her at the outset of their tenancy in October 2008, and therefore the tenants should not be responsible for the second set of fines levied against the landlord. The landlord did not ever give the tenants a copy of the strata's bylaws and rules, so the tenants were not aware and should not be responsible for move-in and move-out fees. The patio door was already broken when the tenants moved in, and they informed the landlord of this. The landlord's response was that it was a strata problem and they would take care of it. Further, the landlord did not do a move-in inspection.

Analysis

Regarding the difference in rent, I find that the landlord took reasonable steps to mitigate her potential loss by accepting the new tenant at a reduced rent. It would not be reasonable for the landlord to wait until the very end of the month for the possibility of receiving a higher rent. The tenants entered into a fixed term lease and chose to break the lease, and they therefore took the risk of having to pay any difference in rent to the end of the lease. I find that the landlord is entitled to the \$2400 claimed for the difference in rent to the end of the lease.

Regarding the strata fines for unauthorized rental, I find that the landlord is not entitled to claim this amount against the tenants. The landlord was aware at the time that she received the tenants' notice to vacate that she would incur fines if she did not take proper steps to put the unit on a rental waiting list. Further, the landlord did not make the tenants aware of these potential additional costs of breaking their lease by providing the tenants with a copy of the strata rules or by including any clauses regarding those fines or the move-in and move-out fees in the tenancy agreement. I therefore dismiss the portions of the landlord's application regarding the fines and the move-in and move-out fees.

Regarding the patio door repairs, I accept the tenants' evidence that the patio door was broken at the outset of the tenancy and that they did bring the issue to the landlord's attention. The landlord did not provide any evidence such as a move-in inspection report to establish that the broken door was the fault of the tenants. I therefore dismiss that portion of the landlord's application.

As the landlord's application was partially successful, I find that she is entitled to partial recovery of her filing fee, in the amount of \$50.

Conclusion

The landlord is entitled to a total of \$2450. I order that the landlord retain the deposit and interest of \$852.54 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1597.46. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 8, 2009.