

Dispute Resolution Services

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

Decision

Dispute Codes: MNR, 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. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Was the tenant entitled to end the tenancy on less than one month's notice?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant moved into the rental unit on March 23 and paid for 8 days of occupancy in March as well as paying a \$415.00 security deposit. The parties further agreed that they entered into a fixed-term tenancy agreement which set the end of the term at March 31, 2010. On March 24 the tenant wrote a letter to the landlord advising that various areas in the rental unit were damaged, that there was an offensive odour in the unit and that she was coughing while in the unit. In this letter the tenant announced that she was ending her tenancy and requested the return of her security deposit.

The landlord testified that he was unable to re-rent the unit in the month of April and seeks \$830.00 in loss of income for April. Although in the narrative portion of his application the landlord made reference to a liquidated damages provision in the tenancy agreement and seemed to imply that he wished to claim liquidated damages, the amount he identified for the monetary order he was seeking was \$830.00, which is the equivalent of one month's rent.

Analysis

Section 45(2) of the Act provides that a tenant in a fixed term tenancy agreement may not end the tenancy prior to the end of the fixed term. The only exception to this rule is found in section 45(3) which provides that if a landlord has breached a material term of the tenancy, the tenant must advise the landlord in writing of the breach and give the landlord a reasonable period of time in which to correct the situation. If the landlord fails to correct the situation within a reasonable period of time, the tenant may end the tenancy early.

In this case, in the letter of March 24 the tenant may have thought she was advising the landlord that he had breached a material term of the tenancy, but she did not do so explicitly nor did she give the landlord a reasonable period in which to correct the situation. I find that the tenant did not comply with the provisions of section 45 of the Act and accordingly find that she wrongfully ended her fixed-term tenancy.

I find that the landlord acted reasonably to mitigate his losses by advertising the rental unit and find that the tenant must be held liable for the landlord's loss of income in April 2009. I award the landlord \$830.00 in lost income for that month. The landlord is also entitled to recover the \$50.00 filing fee paid to bring his application.

I find that because the landlord indicated that he was only seeking \$830.00 in his application and did not add the liquidated damages into that amount in the application, he is limited to claiming \$830.00.

Conclusion

The landlord is awarded \$880.00. I order that the landlord retain the \$415.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$465.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 02, 2009.