

Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application 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

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2008 and ended on May 31, 2009. A security deposit of \$587.50 was paid on June 7, 2008. The written tenancy agreement shows that the tenancy was set for a fixed term of 12 months and was set to expire on May 31, 2009. The landlord testified that after the tenant signed the agreement, she realized that the tenancy agreement should have stated that the fixed term expired on June 30, 2009 so she made that change to the agreement. The parties further agreed that on May 1, 2009 the tenant gave the landlord notice that he would be vacating the unit on May 30, 2009.

The tenant agreed that the landlord was entitled to an award of \$65.00 for carpet cleaning and \$15.00 for general cleaning. The landlord also seeks an order for loss of income for June, a late payment fee for June and \$300.00 in liquidated damages pursuant to a term of the tenancy agreement.

Analysis

The legal principle of contra proferentum dictates that where an ambiguity exists in a contract, the ambiguity is to be construed against the interest of the party that drafted the contract. In this case, the landlord drafted the contract. I find that the discrepancy

between the provision setting the fixed term at 12 months and the provision setting the end of the fixed term at May 31, 2009 is an ambiguity that must be resolved in favour of the tenant and accordingly I find that the fixed term ended on May 31, 2009.

Accordingly I dismiss the landlord's claim for liquidated damages as I have found that the tenant did not end the tenancy prior to the expiry of the fixed term.

The tenancy was to continue on a month to month basis after the expiry of the fixed term. The tenant was required to give one full month's notice to vacate, which means the tenant should have given his notice no later than April 30, 2009 in order for it to be effective on May 31. His failure to do so has left him exposed to liability for any loss which can be directly attributed to the late notice. The landlord testified that she is in the practice of continually advertising vacancies in the building. She advertises in three newspapers and on Craigslist. The landlord testified that she was unable to re-rent the unit until October. In these circumstances, it is clear that the landlord acted reasonably to minimize her losses. However, I am unable to find that the landlord's loss can be attributed to the late notice. Had there been an interest in renting a suite in the building, the advertisements which were in place before the tenant vacated would have attracted prospective tenants. I find that the landlord's loss of income cannot be attributed to the tenant's late notice, but to a dearth of interested tenants. Accordingly I dismiss the landlord's claim for loss of income for the month of June.

As the tenancy ended on May 31, the tenant would not have been required to pay rent in the month of June and I therefore find that the landlord is not entitled to a late payment fee. That claim is dismissed.

As the tenant has agreed to the charges for carpet cleaning and suite cleaning, I award the landlord \$65.00 and \$15.00 respectively for those claims. As the landlord has enjoyed partial success in her application I find it appropriate to award her one half, or \$25.00, of the filing fee paid to bring this application.

The landlord is awarded \$105.00. I order the landlord to retain \$105.00 from the security deposit and interest of \$592.51 and I order the landlord to return the balance of \$487.51 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$487.51. This order may be filed in the Small Claims Division of the Provincial Court

and enforced as an order of that Court.

Conclusion

The landlord is awarded \$105.00 and is ordered to return \$487.51 to the tenant.

Dated September 17, 2009.
