



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC MNR FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent and money owed for loss under the Act, regulation or tenancy agreement.

Despite having been served with the application for dispute resolution and notice of hearing by registered mail on July 2, 2009, the tenant did not participate in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

This tenancy was to be for a fixed term of four months, commencing May 1, 2009 and terminating August 31, 2009, with monthly rent in the amount of \$2580. The written tenancy agreement does not clearly identify the parties, does not appear to have been signed by the landlord, and does not include the standard terms as required by the *Residential Tenancy Act*. A clause defining the fixed term agreement requires the tenant to vacate on May 1, 2009, the start date of the tenancy. This clause also states that if the tenant terminates the tenancy early, the costs of re-rental of the suite and any loss of rental income will be automatically deducted from the security deposit.

The evidence of the landlord was as follows. The tenant paid a security deposit of \$1290, as well as the rent for May 2009. On May 19, 2009, the tenant left a message on the landlord's cell phone, stating that she would not be moving into the rental unit.

The landlord immediately began advertising but was only able to re-rent the unit at a reduced rent as of August 2009. The tenant paid the rent for June 2009. The landlord has claimed July rent of \$2580; the difference in rent of \$130 for August 2009; further loss of rental income for the next eight months (September 2009 to April 2010) “due to off-season re-rental” in the amount of \$728; and re-rental expenses as noted in the lease of \$500, plus \$61.96 for advertising.

The landlord also claimed one further item, \$78.39 for a child gate. The tenant wished to have a child gate installed because she was going to move into the unit with her toddler. The landlord purchased a child gate, for \$78.39, and asked the tenant if she would pay that cost. The tenant agreed to pay for the child gate. The landlord installed the child gate at their own cost, and removed it after the tenant gave notice she would not be moving in. Because the gate had been installed, the landlord was unable to return the child gate to the place of purchase for a refund. In the hearing the landlord stated that the tenant was free to come and get the gate after she paid for it.

Analysis

The tenancy agreement contains serious deficiencies and does not comply with the Act. In particular, the clause defining the fixed term is fatally flawed. The clause identifies the termination date of the tenancy as the previously-identified start date. Moreover, a landlord may not automatically deduct the costs of re-renting or lost revenue from the security deposit. I therefore find that the written tenancy agreement is unenforceable and must by default be defined as a month to month tenancy with the standard terms, as set out in the Act.

Because the tenancy cannot be characterized as a fixed term, the landlord would only be entitled to claim lost revenue for the month following the tenant’s notice to terminate the tenancy. In this case, the tenant informed the landlord of her intention to vacate on May 19, 2009 and the tenant paid the rent for June 2009. The landlord therefore is not entitled to any of the amounts claimed for lost revenue beyond that date. Further, the landlord is not entitled to the re-rental costs claimed. Even if the tenancy agreement

was a valid fixed term lease, the landlord could not claim any lost revenue beyond the term of the lease.

In regard to the cost for the child gate, I find that the terms of that agreement were uncertain, and therefore unenforceable. The landlord did not specify at the time of the agreement whether the tenant would be entitled to remove and keep the gate at the end of the tenancy.

As the landlord's application was unsuccessful, they are not entitled to recovery of the filing fee for the cost of the application.

Conclusion

The landlord's application is dismissed.

If the landlord has not already returned the security deposit, the landlord continues to hold the deposit in trust and it must be administered in accordance with the provisions of the Act.

Dated October 14, 2009.