

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee; 2) from the tenants for return of the security deposit and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy was from October 1, 2009 to September 30, 2010. Rent in the amount of \$1,050.00 was payable in advance on the first day of each month. A security deposit of \$525.00 was collected on September 25, 2009. A move-in condition inspection and report were completed by the parties on October 1, 2009.

By letter dated October 31, 2009, the tenants gave notice of their intent to end the tenancy effective November 30, 2009. Thereafter, the tenants vacated the unit on or about November 13, 2009, at which time a move-out condition inspection and report were completed by the parties. The landlord's agent testified that in spite of broad advertising which commenced in November 2009, new renters have not yet been found.

The landlord seeks monetary compensation for liquidated damages in the amount of \$525.00 arising from the tenants' early termination of the lease, \$1,050.00 for loss of

rental income for the month of December 2009, costs for carpet cleaning of \$95.00, costs for cleaning the drapes of \$30.00, and recovery of the \$50.00 filing fee.

The tenants seek to recover the full security deposit of \$525.00, the key deposit of \$25.00, in addition to the \$50.00 filing fee.

During the hearing the parties exchanged views on various aspects of the dispute and undertook to achieve some resolution.

Analysis

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the landlord withdraws the application to recover costs for cleaning the drapes in the amount of \$30.00;
- that the landlord waives any further claim for a monetary order as compensation for loss of rental income after December 31, 2009;
- that the tenants' key deposit of \$25.00 will be applied against any monetary order that may be issued in favour of the landlord.

Residential Tenancy Policy Guideline # 4 addresses "Liquidated Damages," and provides in part as follows:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

Having considered the documentary evidence and affirmed testimony of the parties, I find there was agreement between the parties to the inclusion in the tenancy agreement of a liquidated damages clause for \$525.00. Accordingly, as the tenants prematurely ended the fixed term tenancy, I find the landlord has established entitlement to liquidated damages of \$525.00.

Residential Tenancy Policy Guideline # 5 speaks to “Duty to Minimize Loss,” and provides in part as follows:

Where the landlord or tenant breaches a term of the tenancy agreement or the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

Having considered the affirmed testimony of the landlord’s agent, I am satisfied that the landlord has undertaken reasonable efforts to mitigate the loss of rental income following the end of the subject tenancy. Accordingly, I find that the landlord has established entitlement to compensation for loss of rental income for December 2009 in the amount of \$1,050.00.

Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises,” and speaks specifically to expectations around carpets under the heading “CARPETS.” The parties agree that carpets in the unit were brand new at the start of this tenancy. The tenants acknowledge ownership of a cat and state that when they smoked, they did so outside. While the move-out condition inspection report notes a need for carpet cleaning, the landlord’s agent testified that the carpets have not yet been cleaned and therefore no related cost has

yet been incurred. I also note that this was an occupancy limited to only 6 weeks. Following consideration of the documentary evidence and affirmed testimony of the parties, I find the landlord has established entitlement to compensation for carpet cleaning in the pro-rated amount of \$11.00. This is calculated as follows:

$\$95.00$ (cost of carpet cleaning) \div 52 (# of weeks in 1 year) = $\$1.8269$ (cost per week)

$\$1.8269$ (cost per week) \times 6 (# of weeks of occupancy) = $\$11.00$ (rounded up cost)

As the landlord has succeeded in this application I find that the landlord is also entitled to recovery of the \$50.00 filing fee.

In summary, I find the landlord has established entitlement to the total amount of \$1,636.00 ($\$525.00 + \$1,050.00 + \$11.00 + 50.00$).

I order that the landlord retain the security deposit of $\$525.00$ and the key deposit of $\$25.00$, and I grant the landlord a monetary order for the balance owed of \$1,086.00 ($\$1,636.00 - \550.00).

Following from the above, all aspects of the tenants' claim are hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$1,086.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 3, 2010

Dispute Resolution Officer