



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes 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.

At the hearing the tenant asked to call her daughter as a witness. The tenant confirmed that her daughter would be giving evidence about issues which were not in dispute and accordingly I determined that it was unnecessary to hear from that witness.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The following facts are not in dispute. The tenancy began on August 1, 2006 and the tenant paid a \$407.50 security deposit at the outset of the tenancy. At the end of the tenancy monthly rent was \$850.00 per month. On September 2, 2009 the tenant gave verbal notice to the landlord advising that she would be vacating the rental unit at the end of the month. The landlord told the tenant that she would not accept verbal notice and that any notice had to be given one full month in advance. On September 10 the tenant gave the landlord written notice that she would be vacating the rental unit on September 11. The tenant returned the keys to the landlord on September 23. The tenant paid \$50.00 to the landlord in compensation for rent lost during October. During the tenancy the tenant painted the walls of the unit with bright colours and at that time

the tenant was advised that she would have to return the walls to neutral colours at the end of the tenancy. The tenant did not return the walls to neutral colours. The tenancy agreement provides that at the end of the tenancy the tenant must have the drapes in the rental unit professionally dry cleaned and the carpets professionally steam cleaned.

The landlord's testimony is as follows. Immediately after receiving the tenant's written notice the landlord began advertising the rental unit. On or about October 10 the landlord was able to re-rent the unit to tenants who began occupancy on November 1 and seeks loss of income for October. On September 29 the landlord spent \$60.00 dry cleaning drapes in the rental unit and spent a further 110.00 cleaning carpets and \$260.00 painting the rental unit. The landlord did not provide the invoices from the companies contracted to perform the cleaning and painting but provided a copy of the landlord's work record. The work record for the painting includes a number of other one bedroom units, for which \$120.00 was charged. The landlord testified that 3 coats of paint were required in order to cover the bright colours the tenant had used on the walls.

The tenant argued that the landlord should have accepted her verbal notice on September 2 and immediately started attempting to re-rent the unit. The tenant further argued that the landlord had ample time between the September 10 notice and the end of the month to secure a new tenant. The tenant argued that during the tenancy she had been permitted to wash the drapes and therefore shouldn't have been required to have them professionally cleaned at the end of the tenancy. In the same vein, the tenant could have rented a steam cleaner for significantly less than what the landlord paid for professional cleaning of the carpets. The tenant suggested that the charge for repainting the rental unit was unreasonable.

Analysis

Section 45 of the *Residential Tenancy Act* provides that to end a month-to-month tenancy, a tenant must provide one full month's notice in writing. In other words, to end the tenancy on September 30, the tenant would have had to give notice in writing no later than August 31. Landlords cannot accept verbal notice for the simple reason that

such notice is not binding on a tenant. If landlords were to secure new tenants on the basis of a verbal notice, the tenant who gave the notice could change her mind and the landlords would be unable to fulfill their contractual obligation to the new tenants. I find that the landlord acted properly in waiting until she had received written notice before advertising the rental unit. Section 53 of the Act provides that when a notice given by a tenant gives an end of tenancy date which does not comply with the requirements of the Act, the effective date of the notice is deemed to be changed to a date which complies with the required notice period. I find that the effective date on the tenant's notice was automatically changed by section 53 to end the tenancy on October 31. I find that the landlord acted reasonably to mitigate her losses and I find that the landlord is entitled to recover the rental income lost during the month of October. As the tenant already paid \$50.00 of the rent for the month of October, I award the landlord \$800.00.

I find that pursuant to the terms of the tenancy agreement, the tenant was obligated to have the drapes and carpets professionally cleaned. The landlord had no obligation to release the tenant from her contractual obligations. Although original invoices were not provided, I find that the amounts claimed are reasonable. I award the landlord \$60.00 for drape cleaning and \$110.00 for carpet cleaning. Residential Tenancy Policy Guideline #1 provides that interior paint has a useful life of 4 years. As this was a 3 year tenancy, I find that the tenant's failure to restore the original colours to the walls of the rental unit deprived the landlord of one year of the useful life of the paint. I therefore find that the landlord is entitled to recover 25% of the cost of painting the unit. I find that the usual cost of repainting a one bedroom suite was \$120.00 but because the tenant painted the walls in vibrant colours, the landlord had to incur \$140.00 in additional fees to cover up those colours. I find that the landlord is entitled to recover the full cost of the additional paint. I award the landlord \$27.50 for repainting and \$140.00 for the additional paint.

As the landlord has been substantially successful in her claim, I find she is also entitled to recover the cost of the filing fee paid to bring this application and I award the landlord \$50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

Loss of income	\$ 800.00
Drape cleaning	\$ 60.00
Carpet cleaning	\$ 110.00
Painting	\$ 27.50
Additional paint	\$ 140.00
Filing fee	\$ 50.00
Total:	\$1,187.50

I order that the landlord retain the \$407.50 security deposit and the \$13.31 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$766.69. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: February 08, 2010
