



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, 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 and a cross-application by the tenant for a monetary order for double the security deposit. Both parties participated in the conference call hearing.

The landlord named only the respondent M.L. in its application while both M.L. and P.P. were applicants in their own claim. While the style of cause in this decision reflects both tenants as respondents, the accompanying order is effective only against M.L. as he was the only respondent listed in the landlord's application.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Are the tenants entitled to an order for the return of double their security deposit?

Background and Evidence

The parties agreed that the tenant M.L. paid a \$387.50 security deposit on August 1, 2007. The parties further agreed that on September 16, 2009 the tenants gave notice that they would be vacating the rental unit on September 30, 2009, that they did indeed vacate by that date and that the landlord received the forwarding address in writing on September 28, 2009. Although there initially was some confusion as to whether the landlord had made its application on October 15, during the hearing I confirmed with an

administrator of the Residential Tenancy Branch that the landlord made its application on that date.

At the hearing there was some discussion as to whether the tenancy agreement was valid as a portion addressing the commencement of the tenancy appeared to have been falsified. I advised the tenants that even if that provision had been falsified, the effect would be that the singular provision would be suspect but the entire agreement would not be void as a result.

The landlord testified that upon receiving the tenants' notice to vacate, advertisements were immediately published but despite their best efforts, the rental unit was not re-rented until December 1, 2009. The landlord seeks to recover \$803.00 in lost income for the month of October. The landlord further testified that the tenants failed to clean the carpets at the end of the tenancy. The landlord provided evidence to show that on October 1, 2009 it paid \$65.00 to have the carpets professionally cleaned.

The tenants maintained that they vacated the rental unit because of concerns for their personal safety as well as the security of their possessions. The tenants acknowledged that they did not clean the carpets at the end of the tenancy, but testified that when M.L. moved into the unit the carpets had not been cleaned.

Analysis

Section 38(6) of the Act provides that when tenants provide their forwarding address in writing and end the tenancy, the landlord has 15 days in which to either return the deposit or make an application for dispute resolution. I find that the tenancy ended on September 30 and the landlord had until October 15 to make its application. I find that the landlord acted within the statutorily prescribed timeframe and accordingly I dismiss the tenants' application for double the security deposit.

Section 45(1) of the Act requires tenants to give a one month notice to end the tenancy no later than the day before rent is due. In this case, in order to end the tenancy on September 30 the tenants would have had to have given their notice to the landlord no

later than August 31. The tenants appear to rely on section 45(3) which permits tenants to end a tenancy without having provided one month notice when the landlord has breached a material term of the tenancy. However, that section requires tenants to give the landlord written notice that there has been a breach of a material term and also to provide the landlord with a reasonable opportunity to correct the situation. While the tenants may have informally made complaints to the landlord about circumstances in the residential property, I find that they did not comply with the formal requirements of section 45(3) and therefore cannot rely on that section as grounds to end the tenancy with less than one month's notice. I find that the tenants gave the landlord insufficient notice to end the tenancy. Section 53 provides that when a notice to end tenancy gives an effective date which does not comply with the Act, the incorrect date is automatically changed to the earliest date that complies with the required notice period. I find that section 53 operates to change the effective date of the tenants' notice to end the tenancy on October 31. I find that the landlord acted reasonably to minimize its losses and I find that the landlord is entitled to recover one month of lost income. I award the landlord \$803.00.

Residential Tenancy Policy Guideline #1 provides that where a tenancy has lasted for at least one year, tenants are responsible to clean carpets. While the condition of the carpets at the outset of the tenancy may not have been clean, the tenants had the option of asking the landlord for compensation at that time. The cleanliness of the carpets at the beginning of the tenancy is largely irrelevant to the issue at hand. I find that as the tenants resided in the rental unit for 2 years, they were obligated to clean the carpets. I accept that the landlord paid \$65.00 for carpet cleaning and I award the landlord that sum in compensation.

As the landlord has been successful in its application I find that the landlord is also entitled to recover the \$50.00 filing fee paid to bring its application and I award the landlord \$50.00 for a total award of \$918.00.

Conclusion

The tenants' claim is dismissed. The landlord has been awarded \$918.00. I order that the landlord retain the \$387.50 security deposit and the \$8.29 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 \$522.21. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: February 11, 2010
