

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord has applied for a monetary order. The tenant has also applied for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

At the outset of the hearing the tenant noted that she had not received evidence from the landlord until the weekend of April 16 -18, 2010. The landlord testified that she had served this evidence on the weekend of April 9-11.

The Residential Tenancy Branch Rules of Procedure require that evidence be provided to all parties 5 clear (business) days in advance of the hearing. For a hearing on Monday, April 19, 2010 all parties should receive the evidence no later than Friday, April 9, 2010 and as such would be considered late if served on either weekend.

However, I find that since the tenant did have the evidence prior to the hearing and was able to discuss issues related to that evidence in the hearing, acceptance of the evidence will not prejudice the tenant.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition, it must be decided if the tenant is entitled to a monetary order for all or part of the security deposit, pursuant to Section 38 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted the following documents into evidence:

- A copy of a room rental agreement signed by the parties on November 5, 2009 for a three month fixed term tenancy beginning on November 1, 2009 for a monthly rent of \$475.00 due on the 1st of the month and security deposit of \$240.00 was paid on November 5, 2009;
- A copy of contact information for the tenant and the landlord, including a forwarding address for the end of the tenancy;

- A typewritten transcript of a phone message attributed to the tenant received by the landlord on November 16, 2009 at 7:49 p.m.; and
- Copies of receipts for carpet cleaning equipment rental and supplies dated November 5, 2009.

The landlord testified the tenant viewed the rental unit on November 1, 2009 at which time she applied to rent the unit and provided references. The landlord decided, based on reference checks, to accept the tenant and entered into a rental agreement signed by both parties on November 5, 2010. The landlord confirmed the tenant paid a security deposit and rent for November 2010.

The tenant testified that she felt pressured by the landlord to sign the tenancy agreement and that the landlord informed her that it was really binding but that she just wanted to have some security for her daughter. The first line in the agreement states: "This is a legally binding agreement between a principal tenant and a tenant who share the same home".

The tenant confirmed in her testimony that she informed the landlord that she would not be moving into the rental unit via telephone message left with the landlord on November 16, 2009. The tenant also confirmed in her testimony the transcript submitted by the landlord was an accurate accounting of the message left for the landlord, specifically that the reasons for ending the tenancy were related to having to stay with a third party because their financial situation wouldn't allow this tenant to take a new rental unit.

The landlord testified the rental unit is still vacant and that she had advertised the vacancy on Craig's List and other bulletin boards. The landlord did not submit any documentary evidence substantiating this testimony.

The landlord had submitted receipts in her evidence showing the rental of carpet cleaning equipment and purchase of cleaning supplies dated November 5, 2009. The landlord indicated that she had tried cleaning the carpet in both the rental unit and the living room of the common area and that she was unsuccessful and had to rent new equipment and completed the cleaning on November 6, 2009.

The tenant's position is that the rental contract between the parties was frustrated as the carpets were wet due to the cleaning and that is why she wanted to end the tenancy, not for the reasons she left in the phone message of November 16, 2009.

Analysis

According to the Residential Tenancy Policy Guidelines a contract is frustrated where, without the fault of either party, a contract becomes incapable of being

performed because of an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible.

I do not find that fulfillment of the contract was deemed impossible because the carpets were wet due to cleaning. I also find that the carpets were wet because the landlord cleaned them, as such the landlord was at fault, contrary to the requirement that neither party be at fault. I am not persuaded by the tenant's argument that contract was frustrated.

Section 45 of the *Act* allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In this tenancy, the earliest the tenant could end the tenancy would be January 31, 2010.

Despite this requirement, Section 7 of the *Act* requires a landlord who claims for damage or loss due to a tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. I am not satisfied the landlord took *all* reasonable steps to mitigate her loss.

However, as the tenant only provided notice to end the tenancy by voice message on November 16, 2009, I find it reasonable that the landlord would have had difficulty renting the rental unit to a new tenant for December 1, 2009.

I therefore, find the tenant is responsible for the full rent owed to the landlord for the month of December 2009.

Section 38 of the *Act* requires a landlord 15 days of the end of the tenancy and receipt of the tenant's forwarding address either return the security deposit or to file an Application for Dispute Resolution to claim against the security deposit. As the tenant had fully paid rent for the month of November 2009 the tenancy ended on November 30, 2009 and the landlord filed her application on December 4, 2009, meeting this requirement.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$525.00** comprised of \$475.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$240.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$285.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 16, 2010.

Dispute Resolution Officer