

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenant gave notice on August 10, 2009 that she would be vacating the rental unit on October 1, 2009. The tenant actually vacated the rental unit on September 14, 2009 and the parties agreed that the landlord would retain the security deposit as payment for rent for the first half of September. The landlord testified that he told the tenant that if he was able to re-rent the unit right away, he would not charge her rent for the remainder of September. The tenant testified that she understood that the landlord would not be charging her rent for the remainder of September if she vacated the unit by September 15.

The parties agreed that the landlord would retain the tenant's security deposit and apply it towards rent owing for the month of September. At the end of the tenancy the landlord wrote a notation on the bottom of the tenant's notice which reads as follows:

Vacated premises prior to Sept. 15/09. (evening of Sept. 14/09) no rent paid for month of Sept./09. Damage deposit held to cover for Sept./09.

The tenant acknowledged that she signed the note written by her landlord and testified that after the discussions she and her partner had had with the landlord, she understood this note to mean that no further rent was payable for September. The landlord testified

that this note was meant to mean that the retention of the damage deposit was meant to cover rent owing only for the first half of September.

Analysis

Tenants are required under the Act to give one full month's notice that they will be vacating the rental unit. In this case, the tenant gave notice on August 10 and the notice therefore was not effective until September 30. Unless the parties come to an agreement that reduced rent is payable in the event of the tenant vacating early, tenants are generally responsible for rent up to the time the notice is effective.

The parties agreed that the notation added to the bottom of the tenant's notice was authored by the landlord. The notation makes it clear that the tenant agreed that the damage deposit should be applied toward rent for September. The notation does not say that the deposit was applied to rent for September 1-14 and does not indicate that further rent was owed. Rather, the deposit was held "to cover for Sept/09" which suggests that the damage deposit was accepted in full satisfaction of any rent that may have been due for that month. While the parties now disagree as to how that notation should be interpreted, I have found that the rule of *contra proferentem* should be applied. *Contra proferentem* is a rule of contractual interpretation which provides that an unclear term should be interpreted in a way that goes against the interest of the party that drafted the term or insisted on its inclusion in the contract. The notation is not clear and I find that the landlord wrote the notation and requested that the tenant sign in agreement. Applying the rule of *contra proferentem* leads me to interpret the notation in favour of the tenant rather than the landlord. I find that the notation must be interpreted to mean that the security deposit was retained by the landlord in full and final satisfaction of rent owed for the month of September.

Conclusion

I find that the landlord accepted the security deposit in full and final satisfaction of September's rent and I dismiss the landlord's claim.

Dated: May 13, 2010
