

DECISION

Dispute Codes MND, MNR, MNSD, 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 were represented in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as requested?

Background and Evidence

The parties agreed that the tenancy began on July 18, 2009 for a fixed term to end on July 31, 2010. Rent was set at \$895.00 per month and the tenant paid a \$447.50 security deposit. The tenants received a \$200.00 moving allowance for signing a 12 month lease. The tenancy agreement contains the following provision:

To terminate this lease prior to the expiry date on the 31 day of July, 2010, the tenant will be required to give notice to end their tenancy as provided for in section 12 herein. In addition the tenant is required to pay \$300.00 as liquidated damages to cover administration costs – this is not a penalty.

Section 12 of the lease provides that tenants must give one month's written notice to end a month to month tenancy.

On December 31 the tenants gave the landlord written notice that they would be vacating the rental unit on January 31. The tenants vacated in accordance with the notice and signed an agreement stating that they owed the \$300 liquidated damages and had to return the \$200.00 moving allowance. The tenants agreed that their security deposit could be applied toward those monies.

In addition to the liquidated damages and moving allowance, the landlord seeks to recover loss of income for the month of February, a late payment fee for February and the filing fee paid to bring their application.

Analysis

The landlord is bound by the terms of the liquidated damages provision. That provision permits the tenants to end the fixed term tenancy on two conditions: (a) that they give one month's written notice that they are ending the tenancy; and (b) that they pay \$300.00. I find that the tenants met both of those conditions and therefore effectively ended the fixed term tenancy. The tenants cannot be held liable for loss of income after the end of the tenancy as it was ended in accordance with the provisions of the tenancy agreement. I therefore dismiss the landlord's claim for loss of income for February and a late payment fee. The tenants had already agreed to pay \$300.00 in liquidated damages and pay back the \$200.00 moving allowance. As the landlord already had the tenants' agreement on those two charges, I find that it was unnecessary for the landlord to bring this claim. Accordingly I find that the landlord must bear the cost of the filing fee.

Conclusion

I award the landlord \$500.00 which represents \$300.00 in liquidated damages and recovery of the \$200.00 moving allowance. I order the landlord to retain the \$447.50 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$52.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 27, 2010
