

DECISION

Dispute Codes CNC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a monetary order. The landlord made a cross-application 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 parties agreed that the tenant vacated the rental unit on April 27. As the tenancy has ended, I consider the claim for an order setting aside the notice to end tenancy to have been withdrawn.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or about November 30, 2009 and that the tenant vacated the rental unit on April 27, 2010. The rental unit is a cottage which is on the same residential property as a separate home in which the landlords reside. There is also a tenanted basement suite on the residential property. There are two electric meters which gauge electrical use throughout the property, one of which meters the usage of the baseboard heaters for each of the homes and the other which meters other electrical usage. The tenancy agreement provides that the tenant pays \$650.00 per month "plus any utilities increase." The parties agreed that on or about April 6 the tenant was served with a one month notice to end tenancy which purported to end the tenancy effective May 31, 2010. The tenant disputed that notice, but vacated the rental unit at the end of April.

The tenant maintained that she had to move because she was not comfortable staying in the unit. The tenant alleged that the landlords were frequently out in the yard and that they closed the windows of the rental unit. The tenant further alleged that the landlords took issue with her having guests who would occasionally stay overnight and tried to illegally raise the rent. The tenant seeks to recover \$250.00 in moving costs, the cost of hydro and cable hook-up when she moves to a location at which such hook-ups will be required as well as the return of her \$325.00 security deposit.

The landlords acknowledged that they were frequently in the yard and stated that they have dogs which run in the yard and require supervision. The landlords further acknowledged having closed the windows in the rental unit, stating that they were concerned that keeping the windows open during the winter would result in increased hydro costs and also posed a safety risk. The landlords further acknowledged having asked the tenant to pay additional rent as they believed that her guests were residing with her full time.

The landlords testified that until the tenant moved out on April 27, they believed she would be staying at least until the end of May, the date on which the notice was effective. The landlords immediately advertised the unit for rent on Craigslist when they discovered the tenant was vacating, but were unable to re-rent it for the month of May and therefore seek an award of \$650.00 in lost income for May. The landlords claim that the rental unit had an unpleasant odour at the end of the tenancy that dissuaded prospective tenants from renting until the odour dissipated. For this reason the landlords wish to retain the security deposit. The landlords further testified that although hydro is included in the rent, the hydro bills for the period in which the tenant has resided in the rental unit have increased significantly, which they believe can be attributed to the tenant leaving windows open, having installed a washer and dryer and having guests stay frequently. The landlords seek to recover \$250.00 in increased hydro costs pursuant to the term in the tenancy agreement which provides that the tenant must pay "any utilities increase."

The tenant testified that when she rented the unit, it was advertised as having laundry hook-ups and that the landlords were well aware that she was installing a washer and dryer. The tenant denied having left windows open when the heat was on and testified that her guests were not permanent residents, but occasional visitors.

Analysis

First addressing the tenant's claim, I find that the tenant chose to vacate the rental unit and was not forcibly evicted by the landlords and therefore I can find no basis on which the landlords should be held liable for the cost of the tenant's move or anticipated hook-up charges for hydro and cable. The tenant's claim is dismissed.

As for the landlord's claim, I find that the tenant did not have the right to end the tenancy prior to May 31. By disputing the notice to end tenancy and then abruptly vacating the rental unit at the end of April, the tenant deprived the landlords of the opportunity to advertise the rental unit and find new tenants for the month of May. I find that the tenant must be held liable for rent for May and I award the landlords \$650.00. As the landlords have been awarded loss of income for the month of May, it is unnecessary to address the question of whether an odour lingered for a period of time in the rental unit and whether that truly dissuaded any prospective tenants is irrelevant.

Although the tenancy agreement requires the tenant to pay any utilities increase, I find that term to be vague and uncertain. The landlords had the obligation to specifically write in the contract what would be considered an acceptable level of hydro use and to identify the point at which the tenant would expect to be charged for additional usage. I find that because the term is vague and uncertain, it cannot be enforceable and must be severed from the contract. I dismiss the landlords' claim for hydro costs.

I find that the landlords are entitled to recover the cost of the filing fee paid to bring their application and I award the landlords \$50.00.

Conclusion

The tenant's claim is dismissed. The landlords are awarded \$700.00 which represents \$650.00 in loss of income and recovery of the \$50.00 filing fee. The security deposit is held by the landlords not just to cover damage to the rental unit, but any loss resulting from the tenancy including loss of rental income. I order the landlords to retain the \$325.00 security deposit in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance owing of \$375.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 28, 2010
