

DECISION

Dispute Codes 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 and pet deposits in partial satisfaction of the claim. 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 following facts are not in dispute. The tenancy began on December 15, 2009 and was set to run for a fixed term until the end of June 2010. The tenant paid a \$480.00 security deposit and a \$480.00 pet deposit at the outset of the tenancy. On or about February 26 the tenant served the landlord with a notice that she would be vacating the rental unit on February 27. The tenant agreed in writing that the landlord could retain the security deposit as liquidated damages. The tenant left several large pieces of furniture in the rental unit and failed to pay \$40.00 for parking for the month of January.

In addition to his claim for liquidated damages and the parking fee, the landlord seeks an award for rent for the month of March as the unit was not re-rented until April 1. The landlord also seeks to recover \$225.00 paid to store and remove furniture from the rental unit as well as a \$150.00 fee for the tenant's failure to comply with the landlord's garbage disposal policy. The landlord testified that he has a policy whereby parties who fail to dispose of their garbage properly are fined \$150.00. The landlord provided a copy of a letter distributed to tenants which announced the implementation of the policy.

Analysis

As the tenant has acknowledged that she owes liquidated damages and the January parking fee, I award the landlord \$480.00 for liquidated damages and \$40.00 for parking. The liquidated damages provision provides as follows.

If the tenant ends the fixed term tenancy before the end of the original term as set out in (b) above, the landlord may treat this Agreement as being at an end. In such event, the sum of \$480.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages covers the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

I find the provision to be poorly worded and unclear. While it clearly states that if the tenant wishes to end the tenancy early, she could pay liquidated damages in which case the landlord had the option of treating the tenancy as being at an end, the second sentence begins "In such event" which could mean "in the event the tenant ends the fixed term early" or "in the event the landlord elects to treat the agreement as being at an end" or both. If the former interpretation is adopted, the landlord is free to claim for unpaid rent for the month of March as the tenant could be held to the strict terms of her obligation under the fixed term. However, given the unclear wording of the liquidated damages provision, I find that the provision can easily be construed to mean that upon payment and acceptance of liquidated damages, the agreement is at an end. While this is not the manner in which the landlord wishes to interpret the contract, I find that the rule of *contra proferentum* applies. This is a rule of contractual interpretation which provides that an ambiguous term in a contract is construed against the party that imposed the term, which in this case is the landlord.

I therefore interpret the liquidated damages provision to mean that upon payment and acceptance of liquidated damages, the landlord elected to treat the tenancy agreement as being at an end. Because the landlord accepted the end of the tenancy as of February 28, 2010, I find that the tenant cannot be held responsible for rent beyond the end of the tenancy and accordingly I dismiss the landlord's claim for rent for March.

The landlord incurred the expense of removing the furniture left behind by the tenant and I find the landlord is entitled to recover this sum. I award the landlord \$225.00.

I dismiss the landlord's claim for the fine for non-compliance with the garbage disposal policy. This term does not appear to have formed part of the tenancy agreement and the landlord cannot unilaterally impose a new term.

As the landlord has been substantially successful in his claim I award him the \$50.00 fee paid to bring his application.

Conclusion

The landlord is awarded \$795.00 which represents \$480.00 in liquidated damages, a \$40.00 parking fee, \$225.00 for furniture removal and the \$50.00 filing fee. I order the landlord to retain \$795.00 from the security and pet deposits.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit
- unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I find that there is no evidence to show that the tenant has extinguished her right to the return of the balance of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the \$165.00 balance owing on the deposits. I

grant the tenant a monetary order under section 67 for \$165.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 14, 2010
