

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on March 8, the tenant did not participate in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed testimony is as follows. The tenancy began on April 1, 2009 and ended on February 28, 2010. The tenancy agreement provides that the tenancy was to run for a fixed term ending on March 31, 2010. The rent was set at \$1,200.00 per month and a \$600.00 security deposit was paid.

The tenants ended the fixed term tenancy in February, one month prior to the end of the fixed term. The tenants did not clean the rental unit and the landlord incurred a cost of \$240.00 to clean the unit, \$60.00 to clean the blinds and \$10.00 to replace two broken vanes on the blinds. The walls were left so dirty that cleaning would not remove the stains and the landlord had to repaint the unit at a cost of \$250.00.

The landlord seeks to recover the costs of repairs and cleaning as well as unpaid rent for the month of March. Despite advertising the unit, the landlord was not able to secure a new tenant until April 2010.

Analysis

I accept the landlord's undisputed testimony and find that the tenant failed to adequately clean the rental unit at the end of the tenancy. I find that the tenant must be held responsible for the cost of cleaning the unit and blinds, repainting the unit and repairing the blinds. I award the landlord \$560.00 for these claims.

As for the claim for loss of income, 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 \$600.00 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. 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.

In this case, upon receiving the tenant's notice that she was vacating the landlord immediately advised the tenant that liquidated damages would be payable. I find that the landlord therefore chose to treat the tenancy as being at an end as of February 28, 2010. Because the landlord accepted the end of the tenancy as of February 28, 2010, I find that the tenant cannot be held responsible for loss of income beyond the end of the tenancy and accordingly I dismiss the landlord's claim for loss of income for March. The landlord is entitled to an award for liquidated damages and I award the landlord \$600.00.

I find that the landlord is entitled to recover the \$50.00 filing fee and I award the landlord that sum.

Conclusion

The landlord is awarded \$1,210.00 which represents \$560.00 for cleaning and repairs, \$600.00 for liquidated damages and \$50.00 for the filing fee. I order the landlord to retain the \$600.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the balance owing of \$610.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: July 05, 2010

Dispute Resolution Officer