

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for return of one month's rent, return of her security in double and recovery of the filing fee for this proceeding.

At the commencement of the hearing, the tenant withdrew her claim for return of the security deposit in double as it had been returned to her with the exception of \$120 that she had agreed the landlord could retain.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to a Monetary Order for return of one month's rent recovery of her filing fee.

Background and Evidence

During the hearing, the parties concurred that, on January 30, 2010, they had entered into a 12-month fixed term rental agreement to commence on March 1, 2010. Rent was set at \$1,725 per month and the tenant paid the now resolved security deposit of \$862.50.

The tenant gave evidence that she attended the rental unit on February 27, 2010 and found the carpets had not been cleaned, although the walls had been painted in colors she had requested the baseboards had not, the smoke detector did not work and there was mold around the sky light. She telephoned the landlord that night, advised that she found the rental unit uninhabitable and that she would not be moving in.

The landlord stated that she had not been with the tenant during her inspection but that she indicated that she was fully prepared to remedy the deficiencies cited by the tenant and further noted that the previous tenants had the carpets professionally cleaned before they returned vacant possession on February 23, 2010.

On March 7, 2010, the tenant advised that landlord that she did want to move in for the balance of the month, but the landlord had already engaged painters to come to return the unit to neutral colors to make ready for new tenants.

Analysis

Section 45(3) of the *Act* will permit a tenant to give notice end a tenancy early if the landlord is in breach of a material term of the agreement, provided that the landlord is advised of the breach in writing and given a reasonable time to make remedy.

While I have not concluded that the landlord breached a material term, I do find that the tenant does not have recourse under section 45(3) by virtue of her failure to give the landlord the written notice or reasonable time to make remedy.

Section 7 of the *Act* imposes on a party making a claim for damage or loss under the legislation or rental agreement to do whatever is reasonable to minimize their loss. I find that by repainting the rental unit to neutral colors the landlord was acting to minimize her loss. In fact, she was able to find new tenants for April 2010, minimizing the applicant tenant's liability for further loss of rent.

In short, I find that the tenant breached the fixed term agreement and the landlord is within her rights to have retained the rent for March 2010.

Conclusion

The tenant's application is dismissed without leave to reapply and she remains responsible for the filing fee for this proceeding.

August 11, 2010