



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was scheduled to hear the landlord's application for compensation for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The parties provided undisputed evidence as follows. The month-to-month tenancy commenced May 1, 2010 and the tenants paid a \$500.00 security deposit. The tenants were required to pay rent of \$1,050.00 on the 1st day of every month under the terms of the tenancy agreement. No move-in inspection was completed. The tenants vacated the unit either April 9, 2011 or April 11, 2011. The tenants did not respond to the landlord's offer to participate in a move-out inspection. The landlord received a forwarding address for the tenants under her door on April 2, 2011.

The landlord is seeking to recover unpaid rent for the month of April 2011 in the amount of \$1,050.00 plus \$140.00 paid to a cleaner after the tenants vacated and \$134.40 paid for carpet cleaning after the tenants vacated. In addition, the landlord is seeking to recover the filing fee paid for this application and picture development costs.

The landlord submitted that she received an email from the tenants on March 17, 2011 and on April 2, 2011 received a letter from the tenants giving notice to end their tenancy effective April 15, 2011. For April's rent the tenants initially gave the landlord a cheque in the amount of \$525.00 and the landlord deposited the cheque. The tenants then advised the landlord in writing on April 6, 2011 that they had cancelled the cheque and

in its place gave the landlord a cheque in the amount of \$25.00 and authorized the landlord to retain the security deposit. The \$525.00 cheque was returned by the bank with the reason that a stop payment had been placed on the cheque. The landlord did not cash the \$25.00 cheque. The landlord testified that advertising efforts commenced on March 18, 2011 via an online website.

In support of the landlord's claims the landlord provided copies of the tenancy agreement, emails exchanged between the parties, the tenant's written notice to end tenancy, the returned cheque, a 10 Day Notice to End Tenancy for Unpaid Rent issued April 2, 2011, and receipts for the cleaner and carpet cleaning company.

The tenants were of the position that they did not owe any rent after April 15, 2011. The tenant claim the landlord permitted them to end their tenancy on the 1st or the 15th of the month and they chose the 15th. The tenants submitted that the landlord was away on vacation when they left a written notice to end tenancy on the landlord's front porch on March 10, 2011. The tenants followed it up with an email sent March 11, 2011.

The tenants did not dispute the landlord's allegations that the unit was left unclean. Rather, the tenants pointed to the veracity of the receipt in response to the landlord's claim for cleaning costs. The landlord explained that she hired a woman who works for the same employer as she does and that this person charged \$20.00 per hour for seven hours of cleaning.

The tenants acknowledged responsibility for carpet cleaning since the person they contracted to do the cleaning did not do the job.

In support of the tenants' position I was provided a copy of an email dated March 18, 2011 written by the landlord and a notice to end tenancy dated March 10, 2011.

The landlord denied receiving the March 10, 2011 notice to end tenancy until receiving the tenants' evidence package. The landlord claimed that she confirmed with her daughter, who was taking care of the property until the landlord returned from vacation, that the notice to end tenancy was not found on the porch or otherwise received.

Analysis

Section 45 of the Act provides for ways a tenant may end a tenancy. Section 45(1) applies to periodic (month-to-month) tenancies. Section 45(1) provides that an effective date must meet two criteria as set out below:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[my emphasis added]

Giving notice that complies with the above requirements is often referred to a giving “one full month” of written notice.

The tenancy agreement requires the tenants to pay rent on the 1st day of every month. Accordingly, under section 45(1) the earliest effective date of the tenant’s notice would have been April 30, 2011 even if the landlord had received the notice dated March 10, 2011.

Upon review of the email communication between the parties, I do not find the landlord waived her entitlement to receive one full month of written notice. Nor do I find evidence of a mutual agreement to end the tenancy April 15, 2011. Rather, the landlord repeatedly communicated to the tenants that rent would be payable for April 2011 and that the tenants were giving short notice. The content of the one email the tenants’ submitted as evidence did not satisfy me that the landlord was waiving her entitlement to receive one full month of written notice. I also accepted the landlord’s submission that she made advertising efforts starting March 18, 2011 in order to mitigate her losses.

In light of the above, I find the tenants responsible for unpaid rent for the month of April 2011. Since the tenants have already authorized the landlord to retain the security deposit in writing for unpaid rent, I award the landlord the remainder of \$550.00.

Upon review of the photographs and in the absence of the tenant’s dispute of the condition of the unit, I hold the tenants financially responsible for the cleaning costs. I find the landlord’s claim for cleaning costs reasonable and I accept that she in fact paid somebody \$140.00 to clean the unit. The landlord is awarded \$140.00 for cleaning costs.

I accept the landlord incurred a cost of \$134.40 to have the carpets cleaned and that as a term of the tenancy agreement, the tenants were required to have the carpets cleaned at the end of the tenancy. The landlord is awarded \$134.40 for carpet cleaning.

Costs incurred for dispute resolution are not recoverable except for the filing fee. Therefore, the landlord is not entitled to recover her photograph development costs but I do award the landlord the filing fee paid for this application. The landlord is awarded \$50.00 for the filing fee.

The landlord is provided a Monetary Order calculated as follows:

| | |
|-----------------------------|-----------|
| Unpaid rent – April 2011 | \$ 550.00 |
| Cleaning | 140.00 |
| Carpet cleaning | 134.40 |
| Filing fee | 50.00 |
| Monetary Order for landlord | \$ 874.40 |

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord was largely successful in this application and has been provided a Monetary Order for the balance of \$874.40 to serve upon the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 08, 2011.

Residential Tenancy Branch