



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting him to retain the security deposit and a cross-application by the tenant for a monetary order and an order for the return of his deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The following facts are not in dispute. On February 22, 2011 the parties entered into a tenancy agreement whereby the tenant agreed to rent the unit for 6 months at a rate of \$750.00 per month. The addendum to the tenancy agreement provides that If the tenant moves out in less than 6 months, the tenant is required to pay a minimum documentation and labour fee of \$120.00.” The tenant paid \$375.00 in cash as a security deposit and gave the landlord cheques to cover the rent and pet damage deposit. The rental unit was in a non-smoking building and the tenancy agreement prohibited smoking in the unit. On February 22, neither the tenant nor the landlord noticed the odour of smoke in the rental unit.

On March 1 the tenant arrived at the rental unit with his belongings in a moving van. The tenant gave the landlord written notice on that day that he would only be staying in the unit for the month of March. The parties completed a condition inspection report which indicated that the unit, particularly the carpet, required cleaning and that there were holes in the bathroom wall and a set of blinds which required replacing. The landlord stated that he would shampoo the carpets and repair the holes. The tenant complained that the rental unit smelled like smoke and asked the landlord to paint the unit. The landlord agreed that the unit smelled like smoke but stated that painting was not required.

On March 2 the tenant contacted the landlord and advised that he would not be moving into the rental unit. On March 3 the parties completed a condition inspection of the unit and the tenant returned the keys to the landlord. The tenant stopped payment on the cheques for the rent and pet damage deposit.

The parties disagreed on a number of issues. The tenant claimed that the rental unit smelled so strongly of smoke, it was not habitable. He stated that although the landlord offered to shampoo carpets and repair the holes in the bathroom, he strongly believed that the unit required painting to address the smell of smoke and was concerned that it would take at least a week to adequately clean the rental unit and that he had to move his belongings somewhere in the interim.

The landlord claimed that he gave the tenant the option of storing his belongings in the landlord's storage room while waiting for the unit to be readied, but the tenant denied that the landlord made such an offer. The landlord insisted that the smell of smoke had largely subsided by the time the carpets were cleaned on March 4 and testified that the unit did not require painting as it had last been painted approximately 2 years earlier.

The landlord seeks to recover \$750.00 in lost income for the month of March, \$15.00 for the bank service charges associated with the cheques on which payment was stopped, a \$45.00 fee for the cost of hiring an employee to walk to the bank to address the returned cheques, liquidated damages of \$120.00 payable because the tenant did not stay for the full term of the lease and \$50.00 as the cost of the filing fee paid to bring his application.

The tenant seeks to recover his security deposit, \$160.00 as the cost of renting a storage unit, \$300.00 for 3 days lost from work, \$50.00 as the cost of stopping payment on the cheques, \$1,500.00 as the return of 2 month's rent to which he believed he was entitled because the landlord did not file an application within 15 days of the end of the tenancy and the \$50.00 filing fee.

Analysis

I accept that the rental unit smelled strongly of smoke on March 1 and I further accept that a smoke free rental unit was likely a material term of the tenancy. Pursuant to section 45(3) of the Act, if the tenant was of the opinion that the landlord had breached a material term of the tenancy, he had the obligation to advise the landlord of this breach in writing and give the landlord a reasonable opportunity to rectify the breach. In this case, while the parties verbally discussed the smoke issue, no written notice of a breach was given. I find that the landlord is therefore entitled to receive rent for the month of March. However, I find that the tenant is entitled to a rent rebate of half of the

month, which I find to be a reasonable period of time in which the landlord could have addressed the cleaning and returned the rental unit to a state in which it could be inhabited by a non-smoker. I therefore award the landlord \$375.00.

I find that the landlord is entitled to recover \$120.00 in liquidated damages as the tenant breached the contract by ending it prior to the end of the fixed term. I award the landlord \$120.00.

As I have found that the tenant did not have the right to summarily end the tenancy agreement, I find that the landlord is entitled to recover the \$15.00 bank charges and I award him \$15.00. I dismiss the landlord's claim for \$45.00 paid to his employee. Although the addendum to the tenancy agreement provides that the tenant is responsible to pay a courier fee, the landlord provided no evidence that a courier was used to transmit documents from the bank and as the tenancy agreement does not provide for other costs, I find the \$45.00 claim has no legal basis.

I find insufficient evidence to show that the landlord offered the tenant the use of an onsite storage area and I find that the tenant acted reasonably in not moving his belongings into the rental unit on March 1. I find that the tenant is entitled to be reimbursed for the cost of storing his belongings for 2 weeks, which I have already found to be a reasonable time in which the landlord could have restored the unit to good condition. I find that the tenant should recover one half of the cost of storage and I award him \$80.00.

I find that the tenant would have had some of his occupied by moving regardless of whether the rental unit had been ready on March 1 and therefore the landlord should not be held responsible for the tenant's loss of wages. The claim is dismissed.

I find that the tenant should not have stopped payment on the cheques payable for the rent and pet damage deposit and I dismiss the claim for the bank charges.

I find that the tenancy ended on March 3 when the tenant returned the keys to the landlord. As the landlord filed his application on March 16, I find that he acted within 15 days of the end of the tenancy and I dismiss the tenant's claim for double the monthly rent. I note that even if the landlord had failed to act within 15 days, the tenant's entitlement would have been limited to double the security deposit.

As the actions of both parties contributed to the issues surrounding the tenancy, I find it appropriate that each bear the cost of their own filing fees.

Conclusion

The landlord has been awarded \$590.00 and the tenant has been awarded \$80.00. Setting off the awards as against each other leaves a balance of \$510.00 owing to the landlord. I order the landlord to retain the \$375.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$135.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 28, 2011

Residential Tenancy Branch