



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 permitting him to retain the security deposit in partial satisfaction of the claim. Both parties were represented at the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

Most of the facts are not in dispute. The tenancy began on February 1, 2009 and ended on July 31, 2011. The tenant paid a \$1,082.50 security deposit in August 2008. The tenant had originally been for a fixed term of one year which provided that the tenancy became a month to month tenancy at the end of the fixed term. In November 2010 the parties signed another tenancy agreement which provided that another fixed term would begin on March 1, 2011 and end on February 29, 2012 (the "New Lease") at an increased rental rate. In June 2011 the tenant gave written notice ending the tenancy in July 2011.

The landlord seeks to recover \$203.21 which is 10% of the cost of replacing the flooring in the rental unit and stated that he believed that the flooring should still have had 10% of its useful life at the end of the tenancy as it was not yet 10 years old. He testified that there were cigarette burns throughout the unit. The tenant's agent did not dispute that there was damage to the flooring but questioned why the landlord had not presented 3 bids for replacing the flooring.

The landlord seeks to recover \$67.20 as the cost of replacing a blind which was irreparably damaged. The landlord testified that other blinds in the unit would probably have to be replaced as well due to smoke damage, but he had limited his claim to just one blind. The tenant's agent argued that this set of blinds was probably smoke

damaged too and questioned why the tenant should be responsible for the cost of replacement when all blinds were being replaced.

The landlord seeks to recover \$2,295.00 in lost income for the month of August. He testified that under the terms of the New Lease, the tenant was contractually bound to pay rent until February 29, 2011. The landlord stated that there was a provision in the lease whereby the tenant could end the term upon 60 days notice if she died or was declared by her doctor unable to continue to live in the rental unit. He stated that although this was not the reason the tenant ended the term early, he was willing to accept 60 days notice as a gesture of goodwill. The tenant's agent argued that the landlord had offered the tenant no consideration for the New Lease and therefore the contract should be void for lack of consideration. When asked what consideration he had offered the tenant, the landlord answered that if there had been a lower rental rate, the tenant would have benefitted as the rate would have been locked in for a year.

The landlord also seeks to recover the \$50.00 filing fee paid to bring his application.

Analysis

I find that the landlord is entitled to recover the cost to replace the flooring and the blinds. Although the landlord was under the impression that he could not make a claim for the cost of repairing smoke damage, there is nothing in the Act that prevents him from doing so and the tenant has benefitted from his choice to only pursue the cost of one set of blinds. In the absence of evidence showing that the charges incurred by the landlord are unreasonably high, I find the cost of flooring to be reasonable. I award the landlord \$203.21 for flooring and \$67.20 for the cost of replacing the blinds.

In order for a contract to be formed, each of the contracting parties must give the other something of value, which is known as consideration. In the case of the New Lease, the tenant gave her promise to pay an increased rent each month, but I am unable to find that the landlord gave consideration. The tenancy was already in place and reverted to a month to month tenancy at the end of the fixed term, so the tenant's housing was secure, and the landlord made no additional promises. I find that the New Lease is void for lack of consideration and that the tenancy was proceeding on a month to month basis. The tenant was entitled under section 45(1) of the Act to terminate the tenancy upon one month's notice and I find that her notice was appropriate. I dismiss the landlord's claim for loss of income.

As the landlord has been just partially successful in his claim, I find that he should recover \$25.00, which is one half of the fee and I award him that sum.

Conclusion

The landlord is awarded \$295.71. The \$1,082.50 security deposit has accrued \$6.78 in interest. I order the landlord to retain \$295.71 from the \$1,088.78 he holds and I order him to return the balance of \$793.07 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$793.07. 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: September 20, 2011

Residential Tenancy Branch