



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 7, 2011 and was set to continue for a 6 month term ending on November 30, 2011. The agreement provides that if the tenant ended the tenancy prior to the expiration of the fixed term, he would be liable for \$400.00 in liquidated damages.

The tenant ended the tenancy effective July 31. The landlord seeks an award for the liquidated damages. The tenant testified that the landlord forced him to end the tenancy because at the time he signed the tenancy agreement, he discussed with the landlord's agent the fact that his girlfriend would eventually be moving into the unit with a rabbit which he intended to keep caged on the deck. The agent had indicated that this would not be a problem and that he should let her know when the rabbit arrived. When the tenant spoke with the agent to let her know when the rabbit would be moving in, he was told that pets were not permitted. The tenant took the position that because of this misrepresentation, he should not be held liable for liquidated damages. The landlord testified that the lease provides that pets are not permitted without the landlord's written permission. The tenant pointed out that the tenancy agreement has a small box beside this provision which he did not initial and said that the provision was not brought to his attention.

The landlord also seeks an award of \$84.00 as the cost of cleaning carpets at the end of the tenancy. She relies upon a term of the tenancy agreement which requires

tenants to have carpets professionally cleaned at the end of the tenancy. The tenant argued that he was not given a second opportunity to schedule a condition inspection and that had he been told at the inspection that he had to clean carpets, he would have ensured that it was done. He further argued that because he only resided in the unit for 2 months, the carpets should not have required cleaning and also that the carpets were stained at the outset of the tenancy.

The landlord further seeks an award of \$40.00 as the cost of cleaning the rental unit. She claimed that the unit was not adequately cleaned. The tenant repeated that had he been advised that the unit was not adequately cleaned at the end of the tenancy, he would have ensured that cleaning was performed.

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

Analysis

The tenant argued that he had been induced to enter in to the contract as a result of a misrepresentation by the agent. The agent did not appear at the hearing to rebut his testimony and I have no reason to believe that the tenant was not being truthful. In the absence of first hand rebuttal evidence from the agent, I find that the tenant was indeed induced to enter the contract by being led to believe that the rabbit would be accepted as a pet. When a party has been induced to enter a contract as a result of a misrepresentation, the contract is voidable. In this case, the tenant took steps to avoid the contract as soon as he discovered the misrepresentation and I find that he had the right to do so. I find that the tenant cannot be held responsible for liquidated damages due to the misrepresentation and I dismiss the claim for liquidated damages. I also dismiss the landlord's claim for the cost of carpet cleaning as the landlord did not suggest that the carpet required cleaning, but merely relied on the term of the tenancy agreement whereby the tenant was required to clean the carpet at the end of the tenancy. As the tenant chose to avoid the contract upon learning of the aforementioned misrepresentation, I find that he cannot be bound by this term.

The tenant did not participate in the condition inspection of the unit at the end of the tenancy. The tenant acknowledged that additional cleaning was required but claimed that had he been told that it required cleaning, he would have performed it himself. The tenant was responsible to have the unit completely cleaned prior to surrendering possession of the unit at 1:00 p.m. on July 31. The purpose of a condition inspection is not for the landlord to point out cleaning deficiencies and give the tenant an opportunity to correct those deficiencies. Rather, it is an opportunity for both parties to inspect the premises and express their opinion as to its condition.

The Act requires the landlord to give the tenant two opportunities to schedule a condition inspection. The tenant claimed that he was not provided with a second opportunity and the landlord gave no evidence that a second opportunity was provided. The Act provides that where the landlord fails to provide 2 opportunities, the landlord's right to claim against the security deposit is extinguished. However, there is nothing in the Act that prevents the landlord from making a claim for damages.

I accept that the rental unit was not reasonably clean at the end of the tenancy. I find the landlord's \$40.00 claim to be reasonable and I award the landlord that sum.

As the landlord has been only partially successful in the claim, I find that the tenant should bear one half of the filing fee paid to bring this application and I award the landlord \$25.00.

The landlord has been awarded a total of \$65.00. Although the landlord has extinguished the right to claim against the security deposit, section 72 of the Act permits me to offset an award against the tenant in favour of the landlord against the security deposit and I find it appropriate to do so here. The landlord currently holds a \$400.00 security deposit. I order the landlord to retain \$65.00 of the deposit in full satisfaction of the claim and I order the landlord to return the balance of \$335.00 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$335.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$65.00 and may deduct this from the security deposit. The landlord is ordered to return the \$335.00 balance to the tenant and the tenant is granted a monetary order for that sum.

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: November 21, 2011
