



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's claim for a monetary order and an order permitting him 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 in August 2008 at which time the tenant paid a \$400.00 security deposit. The parties further agreed that on September 1, 2011, the tenant gave the landlord written notice that she was ending her tenancy on September 30, 2011 and that she did not pay rent for the month of September. The landlord served the tenant with a 10 day notice to end tenancy for unpaid rent and the tenant vacated the rental unit pursuant to that notice.

The tenant argued that she had been told that she could speak with the property manager about disturbance issues in the residential property and that she was waiting to pay her rent until she was able to have that discussion.

The landlord seeks a monetary order for unpaid rent for September and loss of income for October. The landlord argued that the tenant's notice to vacate was one day late and that despite continually advertising the rental unit in newspapers and online, he was unable to find a new tenant until November 1. He testified that the residential property had a number of vacancies during this period, all of which were advertised.

The landlord further seeks an award of \$155.68 for the cost of professionally cleaning the carpet at the end of the tenancy. The landlord testified that an addendum to the tenancy agreement, which was not entered into evidence, provided that the tenant was responsible to pay for professional carpet cleaning at the end of the tenancy. The

tenant did not have the carpet cleaned and the landlord arranged for cleaning. The tenant acknowledged that the provision may have been in the tenancy agreement, although she could not specifically recall it, but testified that when she and the landlord inspected the unit at the end of the tenancy and she said that the carpets weren't clean, he said not to worry about it. The landlord testified that he interpreted her comment about the carpet to mean that it required vacuuming. The tenant stated that she believed that carpet cleaning could be done for much less than what the landlord had paid.

Analysis

The tenant was obligated to pay rent on the first day of September and has provided no legal justification for withholding her rent. I find that the landlord is entitled to recover \$818.00 in unpaid rent for September and I award him this sum.

Section 45 of the Act requires that a tenant end a periodic tenancy by providing written notice on the day before rent is due, to take effect at the end of the following rental period. This means that in order to end her tenancy on September 30, the tenant would have had to provide notice no later than August 31. I find that the tenant's notice was given to the landlord one day late. However, in order to be successful in his claim for lost income for October, the landlord must prove that his loss was a direct result of the tenant's late notice. I am not satisfied that this is the case. The notice was just one day late and there were a number of vacancies in the building, which leads me to believe that the delay in re-renting the unit was not related to the late notice, but rather to a dearth of tenants interested in residing in the building. I find that the landlord has failed to prove that the loss of income was directly related to the late notice and I dismiss the claim for lost income for October.

I accept that the tenancy agreement had a provision whereby the tenant was obligated to have the carpet professionally cleaned. I do not accept that the landlord waived this requirement when he told the tenant not to worry about the carpet not being clean at the end of the tenancy. The condition inspection is not designed to point out defects to the tenant to give her an opportunity to perform further cleaning, but to give a picture of the condition of the rental unit when the tenant surrenders possession. The landlord would have had no obligation to permit the tenant opportunity to clean the carpet after she surrendered possession and I find that any representations made to her at the time of the condition inspection cannot bar the landlord from making his claim. I find the claim for the cost of cleaning to be reasonable and I award the landlord \$155.58.

As the landlord has been substantially successful in his claim, I find that he is entitled to recover the \$50.00 filing fee paid to bring his application and I award him that sum.

Conclusion

The landlord has been awarded \$1,023.58. I order the landlord to retain the \$400.00 security deposit and the \$2.51 in interest which has accrued to the date of this judgment and I grant the landlord a monetary order under section 67 for the balance of \$621.07. 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: December 06, 2011

Residential Tenancy Branch