



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with a claim by the landlord for a monetary order. 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 on August 23, 2011, they entered into a tenancy agreement to begin on September 1, 2011 whereby the tenant was obligated to pay \$1,650.00 per month in rent. The tenant gave the landlord a cheque for September's rent and \$825.00 in cash as a security deposit. The parties further agreed that the tenant vacated the unit on September 2 and stopped payment on the rent cheque. The landlord seeks to recover lost income for the month of September.

The tenant and his wife testified that they arrived at the rental unit on September 1 and discovered that it had not been adequately cleaned, it had an offensive odour, doors and windows didn't lock, air vents contained considerable dust and debris, a wasp's nest was outside the door and the tenant's wife was stung and neighbours told them that there were rats in the back yard. In his written evidence, the tenant documented a list of 17 deficiencies. The tenant and his wife stated that they spoke with the landlord on September 2 and were advised that he was going on vacation and while he agreed to perform some repairs, he did not agree to others. They determined that they could not live under these conditions and they vacated that same evening.

Analysis

Although the parties entered into a fixed term rental agreement obligating the tenant to pay rent each month until August 31, 2012, there are certain circumstances under which the tenants could have been released from that obligation. If the rental unit were not

inhabitable, the tenant could not be held to the agreement as the landlord had utterly failed to meet his obligation under the agreement. However, on the evidence before me I am unable to find that the rental unit was uninhabitable. It may have required cleaning and repairs and may not have met the standard expected by the tenant, but it could have been inhabited. The only other means by which the tenant could have ended the fixed term early is found in section 45(3) of the Act. The tenant could have notified the landlord in writing that he had breached a material term of the tenancy and if he failed to correct the breach within a reasonable time, the tenant could have given written notice to end the tenancy early. The evidence shows that the tenant did not follow this procedure.

I find that the tenant did not have a legal basis on which to end the tenancy early and I find that the landlord suffered a loss of income as a result. I award the landlord \$1,650.00 in lost income as well as a further \$50.00 representing the filing fee paid to bring this application. Section 72(2) of the Act permits me to apply the security deposit to this award and I find it appropriate to do so. I order the landlord to retain the \$825.00 security deposit and I grant him a monetary order under section 67 for the balance of \$875. 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 granted a monetary order for \$875.00 and may retain the security deposit.

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 09, 2011

Residential Tenancy Branch