



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC 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. The landlord and both tenants participated in the conference call hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

On April 8, 2011 the landlord and the tenants signed the tenancy agreement for a tenancy to begin on May 1, 2011. The tenancy agreement does not indicate whether the tenancy was to be on a month-to-month basis or for a fixed term. The agreement also contains a clause indicating that if the tenants breached the fixed term, they would be liable for liquidated damages of \$800. Rent in the amount of \$1100 was payable in advance on the first day of each month. On April 7, 2011, the landlord collected a security deposit from the tenants in the amount of \$550. The tenants arrived at the rental unit on May 1, 2011 and decided not to move in to the rental unit.

Landlord's Evidence

The landlord has claimed \$1100 for May 2011 rent and \$800 for liquidated damages. The tenants signed the tenancy agreement and paid the security deposit, and then informed the landlord that they would be arriving at the rental unit at 7:00 p.m. on May 1st. The tenants appeared earlier in the day, and the landlord had not finished preparing the unit for move-in. The tenants told the landlord that they were not moving into the

rental unit. The landlord gave the tenants several opportunities to do a walk-through of the unit and discuss the tenants' concerns, but they refused to do so.

Beginning on May 3, 2011, the landlord took steps to re-rent the unit as soon as possible. The landlord was able to re-rent for June 1, 2011.

Tenants' Response

In April 2011 the tenants viewed photographs of the rental unit, and then signed the tenancy agreement based on the pictures of the unit. On May 1, 2011 the tenants ended up arriving early, at 3:00 p.m., and the landlord had done renovations to the kitchen, including removing a serving bar. There were stains all over the carpet, the locks had not been changed and the window lock was broken. The tenants felt that the suite had been misrepresented, and that it was a significant change that amounted to a breach of the tenancy agreement by the landlord.

Analysis

The landlord is entitled to recovery of the rent for May 2011. The tenants chose to end the tenancy rather than meet with the landlord to discuss their concerns and give the landlord an opportunity to address any deficiencies. The tenants did not provide sufficient evidence to establish that the landlord fundamentally and irreparably breached the tenancy agreement. As soon as the landlord confirmed that the tenants were not moving in, she took reasonable steps to re-rent the unit as soon as possible.

The landlord is not entitled to the amount claimed for liquidated damages. A liquidated damages amount may only be claimed when a tenant seeks to end a fixed-term tenancy. In this case, the tenancy agreement does not indicate whether the tenancy agreement is a month-to-month or fixed term tenancy. In order for a tenancy to be for a fixed term, the tenancy agreement must specify the date the fixed term ends and whether at the end of the fixed term the tenancy ends and the tenant must move out, or whether the tenancy reverts to a month-to-month tenancy. As the tenancy agreement in this case did not include those provisions, it is presumed to be a month-to-month tenancy. The landlord's claim for liquidated damages is therefore dismissed.

As the landlord's claim was partially successful, she is entitled to partial recovery of the filing fee in the amount of \$25.

Conclusion

The landlord is entitled to \$1125. I order that the landlord retain the security deposit of \$550 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$575. This order may be filed in the Small Claims 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: March 7, 2012.

Residential Tenancy Branch