



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This was the hearing of an application by the tenant for a monetary order. The hearing was conducted by conference call. The tenant attended with his wife. The landlord did not attend although she was served with the application and Notice of Hearing sent by registered mail on November 15, 2012

Issue(s) to be Decided

Is the tenant entitled to a monetary order and if so, in what amount?

Background and Evidence

I was not provided with a copy of the tenancy agreement, but the tenant's testimony established that the parties entered into a fixed term tenancy that commenced on November 1, 2011 for a fixed term ending October 31, 2012. The monthly rent was \$1,900.00 and the tenant paid a \$950.00 security deposit and a \$950.00 pet deposit at the start of the tenancy.

The tenant requested a monetary order in the amount of \$1,900.00, being the amount paid for October 2012 rent and for a further \$1,251.00 for the cost of move-in cleaning pursuant to an invoice issued by the tenant's wife on October 29, 2012.

The tenant testified that the landlord agreed to allow them to end their tenancy before end of the fixed term and relieved them of their obligation to pay rent for October. The tenant referred me to e-mails exchanged between the parties. On July 23, 2012 the tenant sent an e-mail to the landlord; he said:

Good afternoon (names of landlords)

(Name of wife) and I are in the process of purchasing a house in (location) and would like to terminate our residential lease with you on September 30, 2012, one month early. We take possession of the house in (location) on September 1

but would like the month of September to move our things and clean-up your residence.

Please advise if you will allow us to terminate the house lease one month early. If you have renters or potential buyers we are quite willing to make the house available for viewing on reasonable notice.

The tenant submitted the following e-mail from the landlord sent on July 23, 2012 in reply to the tenant's message. The landlord said:

Hi (name of tenant)

I have asked our realtor, (name of realtor) to contact you and make arrangements to come and have a look at the house and then we will make a decision on renting or listing at this time.

Certainly, if you hear of anyone looking for a rental please let us know.

The tenant testified that they moved out at the end of September. They were not present for a move out inspection, but the landlord returned their security and pet deposits at the end of October. The tenant testified that the landlord cashed the post-dated cheque in payment of October's rent contrary to her agreement that they could move out before the end of the tenancy.

There were further e-mail communications between the parties; not all of them were supplied to me. The tenant read portions of the e-mail exchanges that were not supplied. In one of the e-mails the landlord said that she did not intend to release the tenants from the obligation to pay October rent unless she found someone else to rent for the month. She proposed a settlement whereby she would refund the tenants the sum of \$950.00, being half of the rent for October. The tenants rejected this offer.

The tenant testified that the landlord had agreed to pay for cleaning that was necessary when the tenants moved into the rental unit in November, 2011. The tenant submitted a bill for cleaning addressed to the landlord and dated October 29, 2012. The bill was for services said to have been performed on November 2nd to 5th, 2011 at the commencement of the tenancy. The tenant's wife did not say why the invoice was prepared at the end of the tenancy. She said that: "an invoice can be prepared at any time". The invoice was prepared in the name of a commercial cleaning business operated by the tenant's wife.

Analysis and conclusion

The tenants contended that the landlord's e-mail reply to their message regarding early termination of the fixed term tenancy agreement constituted a binding agreement by the landlord releasing the tenants from their obligation to pay rent for the final month of the tenancy. I do not accept the tenants' submission. The landlord's e-mail did not express an agreement, but reserved a decision concerning the property pending a realtors' inspection. There was no sound financial reason for the landlord to agree to forego the last month's rent unless she had secured a new rental for the same period. The landlord offered a compromise, but the tenants rejected it. I find that there was no agreement to release the tenants from their obligation to pay rent for October and I deny this claim.

With respect to cleaning, the tenants allege that there was an agreement to compensate them for cleaning at move-in in November, 2011, but there is nothing in writing and no mention of an amount. The tenants' invoice was created a year after the fact; it was not presented to the landlord as it should have been, immediately after the cleaning was said to have been performed by agreement and it was not brought up by the tenants during their discussions with the landlord surrounding the end of the tenancy. In the absence of an express acknowledgment by the landlord that she would pay the tenant's cleaning charges, I do not allow the claim for cleaning. The tenant's application is dismissed without leave to reapply.

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 6, 2013

Residential Tenancy Branch

