



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Radke Bros. Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF, MNDC

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. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence & Analysis

The parties agree to the following: The tenancy began on June 1, 2012 and ended on April 29, 2013. The parties signed a fixed term tenancy that was to end on May 31, 2013. The tenants were obligated to pay \$1248.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$624.00 security deposit.

Both parties provided documentation and gave testimony for this hearing. All evidence was considered when making a decision.

The landlord is the sole applicant in this matter and I address the landlord's claims and my findings around each as follows.

First Claim – The landlord is seeking \$450.00 for liquidated damages as per Clause 5 of the tenancy agreement and \$563.61 in lost revenue. The landlord stated that the tenant “broke the lease” and left early. The landlord was able to rent the unit for May 15, 2013. The tenant stated that “we had no choice but to leave” due to ongoing construction in the building that interfered with the tenants sleep schedule. The tenant feels the liquidated damages clause is a penalty and that the tenants should not be subject to both costs as claimed by the landlord.

Clause 5 of the Agreement reads as follows:

If the tenant ends the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$450.00 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit or residential property.

The landlord did not provide written evidence to support the accuracy of the landlords' pre-estimate of the amount of liquidated damages charge in this agreement.

The agreement provided the landlord with two options. The landlord could claim the \$450.00 in liquidated damages thereby ending the contract or treat the contract as continuing, in which case the obligations under the contract (such as payment of rent) would continue as well. However, the latter part of Clause 5 states the landlord may make further claims with respect to the contract even though the landlord has chosen to end the contract when the landlord claimed for liquidated damages. I find that the landlord cannot do both. The landlord must either choose to claim for \$450.00 in liquidated damages in which the case the contract has ended or the landlord must not claim the \$450.00 in liquidated damages and keep the contract alive and seek his claim for the loss of revenue. The landlords own contract creates this ambiguity and I will resolve the matter by making a decision based on the landlords own testimony. It was clear to me throughout the hearing the landlord did not wish to have the contract or tenancy end. The landlord was clear and consistent that he wished the tenants to fulfill their rental obligation. Based on the above I find that the landlord is entitled to the loss of revenue in the amount of \$563.61.

Second Claim – The landlord is seeking \$150.00 for suite cleaning, \$120.00 for drape cleaning, and \$35.87. The landlord provided a move in and move out condition inspection report along with photos and receipts to support their claim. The tenants were adamantly opposed to all of the costs as claimed. The tenants stated that they had left the unit in a very clean and reasonable condition and that it did not require cleaning. The male tenant had stated that "I had every intention of getting the drapes cleaned" but was unable to due to school and work commitments. In addition, the male tenant stated that the receipt provided by the landlord was fraudulent. The male tenant stated that he uses the same drycleaner and that the receipt submitted by the landlord looks nothing

like the receipt he is issued. The landlords' manager addressed the tenants' allegation by explaining that they have had a long standing relationship with the drycleaner and that due to some language barriers the drycleaner has the manager write out the receipt on her behalf. On the balance of probabilities, I accept the landlords' testimony and evidence as submitted and find that the landlord is entitled to the above costs in the amount of \$305.87.

The landlord is also entitled to the recovery of the \$50.00 filing fee.

Conclusion

The landlord has established a claim for \$919.48. I order that the landlord retain the \$624.00 deposit partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$295.48. 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: August 19, 2013

Residential Tenancy Branch

