



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting retention of the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail actually received on June 11, 2013, the tenant did not appear.

Issue(s) to be Decided

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

Background and Evidence

This tenancy commenced February 12, 2013 as a fixed term tenancy ending May 31, 2013. Paragraph 2(1) of the written tenancy agreement provided that at the end of the term the tenancy would end the tenant must move out. The monthly rent of \$1000.00 was due on the first day of the month. The tenant paid a security deposit of \$500.00. A move-in inspection was conducted and a move-in condition inspection report was completed.

In April the tenant sent the landlord an e-mail indicating her desire to continue living at the rental unit as long as possible. The landlord was willing to continue this tenancy and therefore made no efforts to re-rent the unit for June.

By an e-mail dated May 22 the tenant advised the landlord that she was going to move after all and she thought her new place would be available June 15. On May 31, again by e-mail, the tenant advised she would be moving June 3.

A move-out inspection was conducted and a move-out condition inspection report completed on June 3. On the move-out condition inspection report the tenant acknowledged that the carpets needed to be cleaned, there was damage to the wall by the front door, a towel rack had been broken, and the oven had not been cleaned.

The landlord paid \$120.75 to have the carpets cleaned; \$275.00 to have the wall repaired; and \$32.47 for a new towel bar. She spent three hours cleaning for which she claims \$20.00 per hour.

The tenant paid the May rent but nothing for June. Although the landlord began advertising as soon as she discovered the tenant would be moving out, she was not able to find a suitable tenant for June. The landlord claims the loss of rental income for June in the amount of \$1000.00.

Analysis

Paragraph 2(b) of the tenancy agreement stated that the tenancy ended at the end of the fixed term and the tenant must move out by that date. Ordinarily, when a tenancy agreement contains such a clause the onus is on the landlord to advertise the unit in time to find a new tenant and the tenant is not responsible for any loss of income experienced by a landlord unable to re-rent the unit after the expiry of the term.

If a tenant does not move out on or before the end of the term, section 57(3) of the *Residential Tenancy Act* provides that: "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

However, in this case, the tenant led the landlord to believe that she would like to continue this tenancy after the expiry of the fixed term. The landlord relied on the tenant's statement and did nothing to re-rent the unit for June, to her ultimate detriment.

Having led the landlord to believe that the tenancy was going to continue the tenant is estopped from relying upon paragraph 2(b) of the tenancy agreement or section 57(3) of the *Residential Tenancy Act*. The tenant is responsible for the loss suffered by the landlord as a result of the landlord relying upon her representation that the tenancy was going to continue; the loss of rental income for June in the amount of \$1000.00.

With respect to the landlord's claims for cleaning and damages, the tenant admitted the damages and the need for certain cleaning on the move-out inspection condition inspection report; the landlord documented the amounts paid to repair the damages, and the amount claimed for cleaning was reasonable. Accordingly, the landlord claim of \$488.22 for damages and cleaning is allowed in full.

I find that the landlord has established a total monetary claim of \$1538.22 comprised of loss of rental income for June in the amount of \$1000.00; cleaning and repairs in the amount of \$488.22; and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1038.22. If

necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

A monetary order in favour of the landlord has been made.

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: October 02, 2013

Residential Tenancy Branch

