Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>   MNR, MNSD, MNDC, FF

<u>Introduction</u>

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. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on July 14, 2014, the tenants did not participate in the conference call hearing. The landlord gave affirmed evidence.

<u>Issue to be Decided</u>

Is the landlord entitled to a monetary order as claimed?

<u>Background, Evidence and Analysis</u>

<u>The landlord's undisputed testimony is as follows</u>. The tenancy began on April 1, 2014 and was to end on March 31, 2015 however the tenants moved out on June 23, 2014. The tenants were obligated to pay $1350.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $675.00 security deposit. The landlord conducted move in and move out condition inspections in writing; the tenants participated in the move in inspection only.

I address the landlord's claims and my findings around each as follows.

First Claim – The landlord is seeking $184.50 for removing rubbish and changing locks, $325.00 for general suite cleaning, $220.00 for carpet cleaning and $183.75 for landscaping costs. The landlord provided documentary evidence to support these claims. Based on the above and in the absence of any disputing evidence from the tenants I find that the landlord is entitled to $913.75.

Second Claim – The landlord is seeking $675.00 liquidated damages for "breaking the lease" and $2700.00 for the loss of revenue for the months of June and July. The landlord stated that they were able to rent the unit for August 1, 2014. The landlord stated that they made numerous attempts to rent the unit by aggressively advertising it on several websites and being available for showings at all hours.

Although the landlord relies on the tenancy agreement to support their claim for liquidated damages; I find the provision to be poorly worded and unclear. While it clearly states that if the tenant wishes to end the tenancy early, they could pay liquidated damages in which case the landlord had the option of treating the tenancy as being at an end, which could mean "in the event the tenant ends the fixed term early" or "in the event the landlord elects to treat the agreement as being at an end" or both. In this case, the landlord expressly stated that she did not consider the agreement as being at an end but wished to hold the tenant to the strict terms of the contract. However, given the unclear wording of the liquidated damages provision, I find that the provision can easily be construed to mean that upon payment and acceptance of liquidated damages, the agreement is at an end. While this is not the manner in which the landlord wishes to interpret the contract, I find that the rule of *contra proferentum* applies. This is a rule of contractual interpretation which provides that an ambiguous term in a contract is construed against the party that imposed the term, which in this case is the landlord.

I am satisfied that the landlord is entitled to the loss of revenue of $2700.00 but dismiss their claim for liquidated damages for the reasons I've listed above.

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

Conclusion

The landlord has established a claim for $3663.25. I order that the landlord retain the $675.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of $2988.25. 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: December 10, 2014

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Residential Tenancy Branch