



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, 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. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in September 2009 and that the tenants vacated the rental unit on May 15, 2010. The parties further agreed that rent was set at \$1,100.00 per month due on the first day of the month and that a \$550.00 security deposit was paid at the outset of the tenancy. The parties further agreed that the tenants gave their notice to end the tenancy on April 15 and paid just \$550.00 in rent for the month of May. At the hearing the tenant acknowledged that she owes \$100.00 pursuant to a term of the tenancy agreement requiring the tenants to pay \$100.00 in administrative costs in the event they ended the tenancy prior to one year after the start date.

The landlord testified that the tenant or her guests smoked in the rental unit and that in order to remove the odour of smoke and a yellow staining on the ceiling, she would have to repaint the unit at a cost of \$1,780.00. The landlord testified that the unit had last been painted immediately before the tenancy began. The tenant testified that she

did not smoke in the unit and that as far as she was aware, no one had ever smoked inside the unit. The landlord claimed to have witnessed a guest of the tenant smoking in the unit at a time when the tenant was not home.

The landlord seeks to recover unpaid rent for May, \$100.00 in liquidated damages pursuant to the terms of the tenancy agreement, the cost of repainting the unit and her filing fee.

Analysis

Section 45(1) of the Act provides that a tenant's notice to end the tenancy must give one full month's notice and takes effect on the day before the rent is due. The tenants' notice given on April 15 therefore cannot have taken effect before May 31. I find that the tenants were responsible to pay rent for the entire month of May and I award the landlord \$550.00. I award the landlord a further \$100.00 in liquidated damages.

The landlord bears the burden of proving her claim on the balance of probabilities. I accept that smoking occurred in the rental unit on at least one occasion, possibly more, when the tenant was not at home. However, I am not satisfied that repainting the unit was the only effective means of removing stains or the odour of smoke. The landlord provided no photographs showing staining and no witness testimony as to the odour present in the unit. Further, the landlord obtained quotations, but provided no evidence to show that the work was actually done. I find that there is insufficient evidence to support the claim for the cost of painting and I dismiss the claim.

I find that the landlord is entitled to recover the \$50.00 paid to bring her application and I award her \$50.00.

Conclusion

The landlord is awarded a total of \$700.00 which represents \$550.00 in rent, \$100.00 in liquidated damages and \$50.00 for the filing fee. I grant the landlord a monetary order

under section 67 for \$700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: October 06, 2010

Dispute Resolution Officer