



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC MNR FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Respondent for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for unpaid rent; or a monetary order in compensation for some missing space heaters and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Applicant agree that the Respondent was the real estate agent that represented the Landlord when he sold the rental unit that is the subject of this dispute. The Landlord contends that the Respondent was also acting as an agent for the purchaser of the rental unit. The Respondent denies that he was acting as an agent for the purchaser of the rental unit. The Landlord submitted no evidence to corroborate his statement that the Respondent was acting as an agent for the purchaser in the real estate transaction.

The Landlord and the Applicant agree that the rental unit was sold, and that the sale completed on February 29, 2008. The parties agree that once the conditions of sale for the rental unit were satisfied, the purchasers notified the Landlord that they wished to have vacant possession of the rental unit upon completion of the sale. The parties agree that once the conditions of sale were satisfied, the Landlord served the tenants in the rental unit with notice that their tenancies would be ending, pursuant to section 49 of the *Residential Tenancy Act (Act)*. The parties agree that all of the tenants occupying the rental unit prior to the sale elected to vacate the rental unit prior to February 01, 2008.

The Landlord stated that sometime prior to the completion of the sale, the Respondent advised him that the purchasers wanted to move into the rental unit prior to the completion date of February 29, 2008. The Landlord stated that the Respondent advised him that the purchasers would pay rent for the month of February, in the amount of \$2,570.00. The Landlord stated that he gave the key to the rental unit to the Respondent and that the new purchasers moved into the rental unit sometime near the beginning of the month of February.

The Landlord stated that he understood the Respondent would collect the rent from the purchasers, which he did not do. The Landlord stated that he has never spoken with the purchasers and that he made no efforts to collect the rent from them. The Landlord

stated that he “believed (the Respondent) would be collecting the rent because he was doing everything else “.

The Respondent stated that he exchanged emails with the Landlord, in which he advised him that the purchaser wished to move into the rental unit prior to the completion of the sale, and that they wished to pay rent on a per diem basis, based on monthly rent of \$1,850.00. The Respondent stated that he did not collect rent from the purchasers.

The Landlord and the Respondent agree that the Landlord asked the Respondent, via email, to retrieve some space heaters that were left in the rental unit by the former tenants. The Respondent stated that he forwarded the Landlord's request to the purchasers but he does not know if the purchasers acted on the Landlord's request.

Copies of emails exchanged between the parties were not submitted in evidence.

Analysis

I find that the Landlord failed to establish that he had a tenancy agreement with the Respondent, or that the Respondent was a tenant in the rental unit. The Act defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. The Act defines a “tenancy” as a tenant's right to possession of a rental unit under a tenancy agreement. In the circumstances before me, I find that the Landlord has not established that the respondent had possession of any portion of the rental unit that is the subject of this dispute or that he had the right to enter the rental unit without authority from the occupants.

The evidence shows that the rental unit was occupied in February of 2008 by the purchasers of the rental unit. I have made no determination regarding whether the Landlord had a tenancy agreement with the purchasers of the rental unit, as that is not an issue at this dispute resolution hearing. The Landlord retains the right to file an Application for Dispute Resolution to seek compensation for unpaid rent from the purchasers.

The Landlord submitted insufficient evidence to establish that the Respondent had agreed to collect rent from the purchaser on behalf of the Landlord, or that the Respondent was subletting the rental unit to the purchasers. The only evidence submitted by the Landlord in this regard was that “he believed the Respondent would be collecting the rent”.

Conclusion

The *Act* applies to tenancy agreements, rental units and other residential property. As the Landlord has not established that he had a tenancy agreement with the Respondent, I find that I do not have jurisdiction in the dispute between these two parties.

Dated: December 18, 2008