

Dispute Resolution Services

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

Decision

Dispute Codes: MND MNDC MNSD OPR FF

Introduction

This hearing dealt with an application by the landlord for a monetary order inclusive of retaining the security deposit in partial satisfaction of the monetary claim. It also included an application for recovery of the filing fee.

It was clarified by the applicant at the outset of the hearing, “that the only real issue here is that the tenants moved out without giving proper notice”, and he agreed that the application is for a monetary order for loss of revenue due to improper notice to end the tenancy, to keep the security deposit in partial satisfaction of his claim, and recovery of the filing fee.

Both, the landlord and the tenant attended the hearing and each gave testimony under solemn affirmation.

Issue(s) to be Decided

Is the tenant’s notice to end tenancy valid?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

In the absence of a tenancy agreement, both parties agree the tenancy began on August 30, 2008. In the absence of a tenancy agreement, the parties disagreed as to

the day of the month in which the rent is payable. The landlord stated it was the 30th. of each month, and the tenant agreed it as reasonable that it was the 30th., based on the

start of the tenancy. Therefore, rent of \$625, utilities of \$150, and 'extra occupant' charge of \$50 per month, for a total of \$825 is payable in advance on the 30th. day of each month,.

At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$315.

According to the tenant's testimony they gave verbal notice on October 03, 2008 that they would be moving out on October 31, 2009. The Landlord testified the verbal notice was given October 08, 2008. Regardless, it was agreed by both parties that the notice was not given in compliance with **Section 45 – Tenant's Notice**, or **Section 52 – Form and Content of Notice to End Tenancy**. Essentially, there was no written notice given to the landlord at least one month before vacating the rental unit. The landlord and tenant agree that the move-in and move-out inspections were not carried out properly. However, this is neither an issue for the landlord or the tenant. I prefer the tenant's evidence that at least by receipt of the tenant's letter of November 10, 2008 the landlord was in possession of the tenant's forwarding address in writing and chose to apply for dispute resolution with 15 days of receiving it.

Analysis

Based on facts to which both parties agreed, I find that the landlord is entitled to compensation for loss of revenue for inadequate notice to end tenancy by the tenant. However, the landlord is also responsible to mitigate losses of revenue, given he was aware, as early as on October 8, 2008 that he would not have tenants after the 31st. of October. I find that the landlord has established a claim for one-half (1/2) month's rent, before utilities portion of the rent, in the amount of \$337.50. The landlord is also entitled to recovery of the \$50 filing fee in respect to this application, for a total entitlement claim of **\$387.50**

Conclusion

I order that the landlord retain the security deposit, and interest, totalling **\$315.93** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$71.57**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: January 16, 2009