



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC

Introduction

This hearing dealt with the tenant's application for a monetary order as compensation for one full month's rent. The tenant participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issue to be Decided

- Whether the tenant is entitled to a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term tenancy was for the three month period from July 1 to September 30, 2008. The tenant submitted a copy of the agreement into evidence. Rent in the amount of \$1,800.00 was paid in advance for each of the three months by way of cheques delivered to the landlord and made payable in U.S. funds, and a security deposit of \$900.00 was collected.

The tenant states that pursuant to the agreement the unit was furnished and rent included appliances and utilities. However, the tenant states that cable and internet services were unavailable for three days of his tenancy as a result of the landlord's failure to pay the bills, bed sheets were never provided and the washing machine remained broken throughout the entire term of his occupancy. As a result of these concerns, on August 1, 2008 the tenant verbally informed the landlord of his intent to vacate the unit at the end of August 2008, which was one month before the expiration date of the agreement. The tenant states that the landlord appeared to understand the tenant's concerns and did not voice any objections to the early end to tenancy.

The tenant states that when he met the landlord in person at the end of August, he returned the landlord's unit keys but the landlord failed to return the tenant's rent cheque for the month of September. Subsequently, the landlord returned the tenant's security deposit but cashed the rent cheque for September. The tenant seeks recovery of rent paid in the amount of U.S. \$1,800.00 for the month of September, which was the period during which he did not occupy the unit.

Analysis

As for the tenant's concern that bed sheets were never provided by the landlord, in reviewing the agreement, I note that "sheets and towels" were not included in the rent.

In his application, the tenant has not applied for compensation for three days loss of cable and internet services as alleged, or for the landlord's failure to provide a functioning washing machine, or for recovery of the filing fee for this application.

Section 44 of the *Act* speaks broadly to **How a tenancy ends**. In particular, section 44(1)(b)(c)(d) provides:

44(1) A tenancy ends only if one or more of the following applies:

- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;

Section 45 of the *Act* addresses **Tenant's notice** and provides, in part, as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Further, section 52 of the *Act* addresses **Form and content of notice to end tenancy** and reads:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) [*tenant's notice*],

state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Based on the documentary evidence and testimony of the tenant, I find that the tenant's notice to end tenancy was ineffective as it was not given pursuant to the statutory provisions set out above. Specifically, the tenant vacated the unit prior to the expiry date of the residential tenancy agreement, notice to end tenancy was not provided in writing and in the approved form, and there is no evidence of a written agreement between the parties to end the tenancy early.

Conclusion

I hereby dismiss the tenant's application for a monetary order without leave to reapply.

DATE: March 5, 2009

Dispute Resolution Officer