



Dispute Resolution Services

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

Decision

Dispute Codes: MNSD

Introduction

This hearing dealt with an application from the landlord for an order providing for retention of the security deposit in satisfaction of the claim. The agent for the landlord and one of the two tenants participated in the hearing and gave affirmed testimony.

The landlord's agent acknowledged that some misunderstanding may have arisen out of communication between the parties during December 2008. In the result, the landlord's agent withdrew the application for a monetary order as compensation for loss of rental income for January 2009, and withdrew the application for recovery of the filing fee.

Issue to be Decided

- Whether the landlord is entitled to retain the security deposit in satisfaction of the claim

Background and Evidence

Pursuant to a written residential tenancy agreement, the term of tenancy was from mid 2006 to June 30, 2007. Thereafter, tenancy continued on a month-to-month basis. Rent in the amount of \$800.00 was payable in advance on the first day of each month, and a security deposit of \$400.00 was collected on or about August 2, 2006.

The landlord issued a number of 10 day notices to end tenancy for unpaid rent during the tenancy. Ultimately, the landlord issued a 1 month notice to end tenancy for cause dated December 15, 2008. The reason shown on the notice for its issuance is "Tenant is repeatedly late paying rent."

During December 2008 the tenant and the landlord's agent communicated in regard to the tenant's interest in terminating the tenancy effective December 31, 2008. This culminated in a situation whereby the parties held differing perspectives as to the tenant's liability for rent in January 2009.

In any event, I find that the tenant did not properly serve notice of his intent to end the tenancy before January 31, 2009, which is the date shown on the 1 month notice by when the tenant must vacate the unit. However, in acknowledgement of some misunderstanding, during the hearing the landlord withdrew the request for a monetary order for loss of rental income for January 2009 and recovery of the filing fee. The landlord's agent also confirmed that the unit was re-rented effective February 1, 2009.

Conversation involving the parties during the hearing included efforts to achieve a mediated resolution of the dispute.

Analysis

Section 44 of the Act broadly addresses **How a tenancy ends**. Section 47 of the Act addresses **Landlord's notice: cause**, and provides in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 1 month notice to end tenancy for cause. The tenant did not dispute the notice within 10 days after receiving it. The tenant is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the notice which was January 31, 2009. Section 47(4) & (5) of the Act state:

47(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

For reference, the parties are informed of additional relevant statutory provisions which concern ending a tenancy, as below.

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(1) A tenant may end a periodic 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, and

(b) 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.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

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.

Pursuant to section 63 of the Act, during the hearing the parties reached a settlement of the dispute. Specifically, it was agreed that the landlord may retain the security deposit plus any accrued interest as full and final settlement of all aspects of the dispute for both parties.

Conclusion

I hereby order the landlord to retain the security deposit of \$400.00 plus any accrued interest as full and final settlement of all aspects of the dispute for both parties.

DATE: March 19, 2009

Dispute Resolution Officer