



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, FF

Introduction

This hearing dealt with an application from the landlord for a monetary order in compensation for unpaid rent / loss of rental income, and recovery of the filing fee for this application. The landlord, one witness for the landlord and the male tenant ("M") 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 female tenant ("F") did not appear. "M" did not claim the hearing package sent to him by registered mail, and it was a result of his chance meeting in public with the landlord's witness that led to his awareness and participation in the hearing.

Issue to be Decided

- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a daytime meeting with "M" and "F" at the unit on or about November 20, 2008, the landlord's understanding was that "M" and "F" were interested in renting the unit effective December 1, 2008. Later that day, "F" telephoned the landlord and confirmed her intention to rent. Subsequently, the landlord was provided with three post-dated cheques issued by "M": 1) cheque post-dated December 1, 2008 for security deposit of \$800.00; 2) cheque post-dated December 1, 2008 for rent of \$1,600.00; and 3) cheque post-dated December 1, 2009 for rent of \$1,600.00.

Several days later the landlord states that she was in contact with "F" by telephone on November 30, 2008. During the telephone conversation "F" informed the landlord she would attend the unit around 9:30 a.m. on December 1, 2008 in order to pick up the

keys from the mailbox. Later that day around 12:30 p.m. the landlord attended the unit and found that the keys had not yet been picked up. The landlord then received a voice mail message from “F” at 12:59 p.m. in which “F” informed the landlord that she would not be moving into the unit. Subsequently, the landlord found that a “stop payment” was put on the rent cheque for December 2008. Neither did the landlord cash the cheque for the security deposit.

“M” testified that while he attended the unit with “F” on or around November 20, 2008, they were separated and it was not ever his intention to live with “F” as a tenant in the unit. He said he put a stop payment on the cheques after learning that “F” had decided not to move into the unit. “M” also said that his issuance of the subject cheques on “F’s” behalf was another means of discharging his responsibility for making child support payments to “F.” As to the cheque post-dated December 1, 2009, he stated he issued that on the basis of his understanding from “F” that such a cheque was required to demonstrate a commitment to a year long tenancy.

The landlord testified that as “M” and “F” viewed the unit together and “M” issued the cheques, she simply presumed that “M” and “F” were to be co-tenants in the unit. However, the landlord did not dispute “M’s” position which is that he never said anything to the landlord during the meeting in November 2008 which explicitly conveyed that he himself would be a tenant.

The landlord said she rented the unit effective February 1, 2009, and she seeks recovery of unpaid rent for December 2008, loss of rental income for January 2009, in addition to the costs for advertising the unit and recovery of the filing fee.

Analysis

Section 1 of the Act speaks to **Definitions** and provides in part, as follows:

“**tenancy agreement**” means 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;

“tenant” includes

(b) when the context requires, a former or prospective tenant.

Based on the evidence and testimony of the parties, in concert with the above definitions, I find that “M” is not a tenant in the circumstances of this dispute and that he did not enter into a tenancy agreement with the landlord. On the other hand, based on the evidence and undisputed testimony of the parties, I find that “F” is a tenant and did enter into a tenancy agreement with the landlord. Hereafter, “F” will be referred to here as “the tenant.”

Section 45 of the Act addresses **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.

(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.

Section 52 of the Act provides for the **Form and content of notice to end tenancy**, as follows:

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 given in the approved form.

Based on the documentary evidence and undisputed testimony of the landlord, I find that the tenant's notice to end tenancy failed to comply with the above statutory provisions. Further, I find that while the landlord attempted to mitigate the loss of rental income by advertising the unit, the unit remained vacant through to the end of January 2009 and the unit was not rented until February 1, 2009.

In the result, I find that the landlord has established a claim of \$3,347.40. This is comprised of unpaid rent of \$1,600.00 for December 2008, loss of rental income of \$1,600.00 for January 2009, costs for advertising in the amount of \$97.40 and recovery of the \$50.00 filing fee for this application. I therefore grant the landlord a monetary order under section 67 of the Act for \$3,347.40.

Conclusion

I hereby grant the landlord a monetary order under section 67 of the Act for **\$3,347.40**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 31, 2009

Dispute Resolution Officer