



Dispute Resolution Services

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

Decision

Dispute Codes: MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. One of the landlords and both tenants participated in the conference call hearing.

The tenants submitted late evidence that they also sent to the landlord by registered mail two days before the hearing. The landlord did not receive the tenants' evidence before the hearing. I therefore did not admit or consider the tenants' evidence in this matter.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed?

Background and Evidence

The tenancy began on September 1, 2008. Rent in the amount of \$1350 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$675. The tenancy ended on March 1, 2009.

The evidence of the landlord was as follows. The first that the landlord heard about the tenants vacating the rental unit was on February 17, 2009, when a rental management company left a message on the landlord's home phone, seeking a reference for one of the tenants, NV. As she had not received notice, the landlord assumed that the other tenant, MW, was staying on. On February 20, 2009 the landlord received a message

on her cell phone from the tenant MW, telling the landlord they wanted a move out inspection on February 28, 2009. The landlord checked her message machine at home and there was a message from NV left on February 19, 2009 that MW had dropped a letter on “the first” [of February] for notice for the end of the month. On February 20, 21, and 22 the landlord tried several times to call the tenants and left voice messages for them.

On February 23, 2009 MW returned the landlord’s calls and said that they had originally left a letter on the dryer along with their rent on February 1, 2009, and then MW left a note on the landlord’s door. The landlord did not see the letter when she picked up the rent cheques; nor was any note on her door or any indication of one having been affixed there. On February 23, 2009 the landlord immediately began advertising to re-rent. The tenants moved out on March 1, 2009. The landlord was unable to re-rent the unit for March 2009, and therefore claims loss of revenue for that month, in the amount of \$1350.

The response of the tenants was as follows. On February 1, 2009 the tenants left their rent and their notice to end tenancy on the dryer in the residential unit, where the landlord always picked up the rent. Later in the day, they saw that the rent had been picked up but the letter had not. At 5:30 am on February 2, 2009 MW taped the letter to the door at the landlord’s address. The tenants do not feel that they should have to pay the lost revenue for March, as they took steps to give their notice early in the month.

Analysis

The *Residential Tenancy Act* requires that when a tenant seeks to end a month-to-month tenancy, they must give one full month’s notice in writing, at least one day before the rent is due. If the tenant fails to do so, they may be responsible for lost revenue for the following month if the landlord cannot re-rent the unit. If a landlord is claiming lost revenue, the landlord must establish that they took reasonable steps to reduce any potential loss by attempting to re-rent as soon as possible. In this case, the tenants did not properly serve the landlord with the notice on February 1, 2009. MW testified on February 2, 2009 she taped the notice to the landlord’s door, and the landlord denied that she received anything taped to her door. Posting the notice on the landlord’s door

is an acceptable method of service; however, it is a rebuttable presumption. In this case, I accept the landlord's testimony that she did not receive the notice. The landlord was not able to confirm until February 23, 2009 that the tenants were moving out. The landlord then immediately took reasonable steps to re-rent as soon as possible, but was unable to re-rent for March 2009. I therefore find that the landlord has established a claim for \$1350 in lost revenue. The landlord is also entitled to recovery of the \$50 filing fee.

Conclusion

I order that the landlord retain the deposit and interest of \$678.38 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$721.62. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 19, 2009.