



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, re-renting costs, to retain the tenant's security deposit and pet deposit and recover the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Is the tenant responsible for paying for rent for February 2009?
2. Has the landlord established an entitlement to recover re-renting costs from the tenant?
3. Retention of the security deposit and pet deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing from both parties and review of the tenancy agreement, I make the following findings. The landlord and tenant signed a tenancy agreement on January 25, 2009. The tenancy was to commence February 1, 2009 and the tenant was to pay rent of \$1,175.00 on the 1st day of every month. On January 26 or 29, 2009 the tenant's boyfriend telephoned the landlord and told the landlord they would be cancelling the lease. The reason for cancelling the lease was that the tenant had not given her current landlord sufficient notice to end that tenancy and the tenant could not afford to pay rent for two rental units. The landlord commenced advertising efforts on January 29, 2009 and secured replacement tenants on February 20, 2009. The new tenants took possession March 1, 2009.

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In making this application, the landlord is seeking unpaid rent for February 2009 in the amount of \$1,175.00 and recovery of \$99.19 in advertising costs and \$100.00 for five hours the landlord spent showing the rental unit to prospective tenants.

The tenant submitted that the landlord was informed that they could not take the rental unit on January 26, 2009 and not January 29, 2009 as the landlord testified. The tenant testified that the landlord had altered the tenancy agreement signed by the tenant to include additional terms pertaining to pets, smoking, late payment fees, parking and cleanliness standards. The tenant did not know the landlord had altered the tenancy agreement until being served with the hearing documents; however, the tenant was of the position that the additional terms invalidated the tenancy agreement.

Although both parties referred to the tenancy agreement as a lease and the landlord provided undisputed testimony that the tenancy was for a fixed term of one year, upon review of the written tenancy agreement submitted by both parties, I find that the tenancy was to be on a month-to-month basis.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Therefore, I find the tenant was bound by the enforceable terms of the tenancy agreement starting January 25, 2009.

I have reviewed the additional terms included on the landlord's copy of the tenancy agreement and I do not find that adding those particular terms invalidated the entire tenancy agreement as the additional terms did not go to the heart of the tenancy

agreement. Rather, I find that those individual terms that were added would have been unenforceable against the tenant.

As stated previously, I have found that the parties had entered into a month-to-month tenancy agreement. Where a tenant in a month-to-month tenancy wishes to end the tenancy, the Act requires the tenant to provide the landlord with written notice at least one month before the tenancy is to end. The tenant did not provide such notice to the landlord in this case. I am also satisfied that the landlord made reasonable efforts to find replacement tenants. Therefore, I find the tenant was obligated to pay rent for February 2009.

Even if the tenant had provided one month of written notice to end the tenancy for the end of February, the landlord would have had to spent time and money advertising the rental unit for March 2009. Therefore, I do not find the tenant's failure to provide one month of written notice inflicted any significant additional re-renting costs upon the landlord and I do not grant the landlord's request to recover these costs from the tenant.

As I have found the tenant was required to pay rent for February 2009, I grant the landlord's request to retain the tenant's security deposit and pet deposit in partial satisfaction of the rent owed.

As the landlord was largely successful with this application I award the filing fee to the landlord. Pursuant to section 72 of the Act I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – February 2009	\$ 1,175.00
Less: security deposit	(550.00)
Less: pet deposit	(275.00)



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Filing fee	<u>50.00</u>
Monetary Order	<u>\$ 400.00</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is entitled to unpaid rent and may retain the tenant's security deposit and pet deposit in partial satisfaction of this amount. The landlord is also provided a Monetary Order for the balance owing in the amount of \$400.00 to enforce against the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 14, 2009.

Dispute Resolution Officer