

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MNR, MNSD

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income for April 2009 and to retain the security deposit in partial satisfaction of his claim.

The tenant was represented by his agent. Both parties were given full opportunity to present evidence and make submissions.

On March 30, 2009, a hearing was held to resolve the issue of a notice to end tenancy that was served on the tenant for non payment of rent for the month of February and partial payment of rent for the month of January 2009. The notice was upheld and the tenant was allowed an extension of time. The landlord was issued an order of possession effective on April 30, 2009.

Issues to be decided

The tenant moved out on March 31, 2009 without giving the landlord notice to end the tenancy. Is the landlord entitled to a monetary order for loss of income April 2009? Is the landlord entitled to retain the security deposit in partial satisfaction of this claim?

Background and Evidence

The landlord testified that the tenancy started on November 13, 2008. The monthly rent was \$600.00 payable on the first day of each month. On November 16, 2008, the tenant paid a security deposit of \$300.00.

The landlord testified that he made several attempts to contact the tenant after he failed to pay rent for April. Finally on or about April 10, 2009, the landlord visited the trailer and discovered that the tenant had moved out. The landlord stated that he found a dirty washroom and the smell of cat urine inside the trailer.

The landlord also stated that the skirting of the rental unit was torn off and left in the yard and that the firewood from the wood shed was missing.

During the hearing the landlord made a claim to recover the cost of cleaning, repair of the skirting or to replace the firewood. However, the landlord did not include this claim in his written application and in addition the landlord has not filed any evidence to support his claim for the above.

The tenant testified that on March 31, 2009, he called the landlord and advised him that he was moving out that day and that he would be leaving the keys on the kitchen counter. The tenant stated that he did not own a cat but did have a cat in the rental unit for one week. He also stated that the skirting was removed prior to the start of the tenancy and that he did not take the firewood.

The tenant stated that he did not pay rent for April for two reasons. One; the landlord had served him with a notice to end tenancy which was upheld at the previous hearing and two; he moved out at the end of March and therefore did not owe rent for April.

Analysis

Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement, unless the tenant has a right under the *Act*, to deduct all or a portion of the rent. In this case, as per the ruling at the hearing on March 30, 2009, the tenancy was to end on April 30, 2009. However, the tenant moved out prior to the date that the tenancy would end, without giving the landlord the appropriate notice.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a tenancy by giving the landlord notice to end the tenancy on a date that is not earlier than one month after the date the landlord receives the notice. The notice to end tenancy must comply with Section 52 which states that the notice must be in writing.

The tenant stated that on March 31, 2009, he advised the landlord over the phone that he was moving out on that same day. Therefore, by the tenant's own admission, he did not give the landlord adequate notice to end the tenancy nor did he give the landlord a written notice to end tenancy. This caused the landlord to suffer a loss of income for the month of April 2009 and I find that the tenant must compensate the landlord for this loss.

The landlord's claim for cleaning, repairs and replacement of the firewood is dismissed as the landlord did not include this claim in his application and did not provide any evidence to support his claim.

I order that the landlord retain the security deposit of \$300.00 and interest of \$0.57 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$299.43. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$299.43**.

Dated July 13, 2009.

Dispute Resolution Officer