

DECISION

Dispute Codes MNR, MNSD

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary orders for unpaid rent and to retain the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Background and Evidence

This tenancy began in February of 2009 and ended in May of 2009. The Landlord sub leased one room in her rental unit to the Tenant for \$500.00 per month. There was no written tenancy agreement or condition inspection reports done. There is some discrepancy between the parties as to when the rent was payable. The Tenant says he was to pay the rent on the fifth day of the month, as he moved in on the fifth of February. The Landlord believed the rent was due on the first day of the month.

On May 2, 2009, the Landlord issued the Tenant a 10 day Notice to End Tenancy for alleged non-payment of rent. The Landlord testified she was concerned because the Tenant was allegedly doing drugs in the unit and not cleaning up after himself. The Landlord further claims she became fearful of the Tenant and changed the locks on or about May 11, 2009.

She claims for May rent of \$500.00 and to keep the security deposit of \$250.00, as she alleges the Tenant left the room dirty.

The Tenant testified he received the 10 day Notice to End Tenancy on May 2, 2009, although he claims it said he had five days to move out. Nevertheless, he began removing his property. He further testified that when he returned on May 2, 2009, the Landlord had changed the locks. He testified he was unable to enter the unit to clean due to this.

The Tenant had a witness appear on his behalf, who in fact is the actual property owner and who is the landlord of the applicant. This witness testified that he found out the locks had been changed, without his permission as the property owner, on May 2, 2009.

He testified he had seen the eviction Notice, and it did require the Tenant to move out on May 5, 2009.

The Landlord did not supply a copy of the Notice to End Tenancy in evidence.

Analysis

Having heard the testimony and having reviewing the evidence, and based on the foregoing and on a balance of probabilities, I find as follows:

I dismiss the claim of the Landlord and order her to return the security deposit to the Tenant immediately.

I find the Landlord was in breach of the Act as the Notice to End Tenancy was invalid. The Landlord had insufficient evidence to show she had a right to evict the Tenant, under the Act or tenancy agreement.

I find that the Landlord is not entitled to rent for the month of May 2009, as she wrongfully evicted the Tenant. I also find that the Landlord breached the Act by changing the locks. As she provided no opportunity to the Tenant to clean the unit, I also find she is not entitled to keep any portion of the security deposit.

I am granting a monetary order to the Tenant for the amount of his security deposit. He must serve the Landlord with the order. I also order that the Landlord must pay the Tenant his security deposit within 15 days of receipt of the order from the Tenant, or the Tenant has leave to apply for a further order for double the security deposit. This order is enforceable in the Provincial Court.

Conclusion

The Landlord's claim is dismissed, as she did not validly issue a Notice to End Tenancy, nor did she allow the Tenant time to clean the room. The Tenant does not have to pay rent for May of 2009, and the Landlord is to return his security deposit within 15 days of the Tenant serving her with the order. If the Landlord does not pay the security deposit to the Tenant within 15 days after service, the Tenant has leave to apply for double the security deposit.

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: August 13, 2009.

Dispute Resolution Officer