

DECISION

Dispute Codes MNR, O, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking a monetary order for unpaid rent under the Act or tenancy agreement.

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 one month of rent from the Tenant?

Background and Evidence

This tenancy began on July 23, 2005, and was initially for a fixed term of one year. Following the initial one year term, the tenancy continued on a month to month basis, as per the tenancy agreement. The Tenant paid a security deposit of \$750.00 on July 12, 2005.

On or about April 15, 2009, the Landlord telephoned the Tenant and informed her he would soon be issuing a two month Notice to End Tenancy, as the Landlord intended to re-occupy the rental unit at the end of July 2009.

Apparently the Tenant informed the Landlord she would be out of the country in July and requested that the two month Notice to End Tenancy be issued with an effective date of June 30, 2009.

On or about April 16, 2009, the Tenant phoned the Landlord and informed him she had found another rental unit to move to and that she would be giving him her Notice to End Tenancy effective on May 1, 2009.

On April 23, 2009, the Landlord mailed a registered letter to the Tenant, and included the two month Notice to End Tenancy. Under the Act this Notice was deemed served five days later, on April 28, 2009. In his cover letter the Landlord informs the Tenant she will receive the month of June rent free.

In a letter dated April 24, 2009, the Tenant acknowledges receipt of the Notice and informs the Landlord she is giving her Notice, to be effective May 1, 2009. The Tenant

says she mailed the letter on April 24, 2009, and again it is deemed served under the Act five days later, or April 29, 2009.

On May 1, 2009, the Tenant and an Agent for the Landlord completed the move out condition inspection report. No deductions from the security deposit are noted in the report and no damages or amounts due are shown.

The Landlord claims the Tenant owes him the month of May 2009 in rent. He has not compensated the Tenant for the equivalent of one month of rent, nor did he apply to keep the security deposit in this Application.

Analysis

Based on the foregoing, the affirmed testimony and evidence, and on a balance of probabilities, I find the Landlord's claim must be dismissed, for the following reasons:

Once the Landlord issued the two month Notice to End Tenancy, the Tenant was entitled to an amount equivalent to one month of rent, pursuant to section 51 of the Act.

Under section 50 of the Act the Tenant is entitled to end the tenancy early by giving the Landlord at least 10 days Notice. As a result the Tenant should have paid the Landlord rent due until May 9, 2009, and the Landlord should have paid the Tenant for the balance of May 2009, or 22 days of rent.

Based on the service date calculations, which I do not hold are binding on a subsequent Dispute Resolution Officer, the Landlord owes the Tenant compensation for approximately 22 days of rent under sections 50 and 51. However, as this was the Landlord's Application for Dispute Resolution, the Tenant must now apply for this compensation. The Tenant has leave to apply for compensation and I do not consider this matter as being completely determined.

However, there is another matter that I *must* deal with in this Application, which involves the security deposit and interest. Under the policy guidelines, in circumstances such as this where the Landlord has not claimed to retain the security deposit and interest, and is still holding the deposit, I must award the Tenant double the security deposit.

Therefore, I find and order that the Landlord must pay the Tenant **\$1,526.56**, comprised of double the security deposit of \$750.00 and the interest on the original amount held of \$26.56. The Tenant is given an order in these terms, must serve it on the Landlord as soon as possible after receiving it and may enforce it through the Provincial Court.

Conclusion

The Landlord's Application is dismissed. It appears the Landlord still must compensate the Tenant pursuant to sections 50 and 51 of the Act, however, I make no binding determinations on this issue and the Tenant has leave to apply for this relief.

Under the policy guidelines and the Act, I must order the Landlord to return double the security deposit and the interest to 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: September 03, 2009.

Dispute Resolution Officer