



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's request to retain the tenants' security deposit in satisfaction of unpaid rent for June 2009 and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard. The tenant testified the hearing packages were incorrectly addressed but that the post office delivered the hearing packages to the correct address. The tenant confirmed the hearing packages were provided to her and the co-tenant and they were aware of the landlord's claims against them.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Retention of the security deposit.
3. Award of the filing fee.

Background and Evidence

The parties provided undisputed testimony as follows. The tenancy commenced May 15, 2009 and the tenants vacated the rental unit May 30, 2009. The parties did not sign a written tenancy agreement. The tenants were required to pay rent of \$1,700.00 per month and were permitted to pay the rent in two instalments of \$850.00 semi-monthly. The tenant had paid a security deposit of \$850.00. On May 26, 2009 the tenant provided verbal notice to the landlord that the tenants would be vacating effective May 30, 2009. The landlord cashed the rent cheque dated June 1, 2009 for \$850.00 and is requesting retention of the security deposit in satisfaction of the loss of rent incurred for the month of June 2009.

The tenant testified that the tenancy was to be for a fixed term of one year. In recognition of the lack of a written tenancy agreement, the landlord was of the position the tenancy was on a month-to-month basis and is only seeking recovery of one month of lost rent even though the rental unit was vacant for June and July 2009. The landlord testified that advertising efforts commenced immediately after receiving notice from the tenant.

The tenant explained that they gave notice to end their tenancy due to a pitbull dog living next door and the behaviour of the dog's owner towards them. The tenant was of the position that the landlord failed to inform her that a pitbull lived next door when they viewed the rental unit and that this was a serious concern to the tenant as she has two young children. The tenant testified she notified the landlord of the pitbull living next door shortly after the tenancy commenced but that the neighbour is an owner in the strata and not a tenant.

In response to the tenant's submissions, the landlord testified that there have been no complaints about the dog's behaviour and that the dog is friendly. Rather, the landlord alleged that the tenant cited a family emergency as being the reason for moving back home with the tenant's father.

Analysis

As the tenant was informed during the hearing, the Act recognizes oral tenancy agreements in the definition of a tenancy agreement and the Act applies to such agreements in order to enforce the rights and obligations of both parties.

The tenant claimed to have a fixed term tenancy; however, a tenant cannot elect to end a fixed term tenancy before the end of the fixed term. Vacating prior to the end of a fixed term could obligate the tenant to pay the landlord rent for the remainder of the term. Where a tenancy is on a month-to-month basis, the tenant is permitted to end the tenancy by giving one full month of written notice. As there is no written tenancy agreement and the landlord is prepared to accept that this was a month-to-month tenancy, the most beneficial approach for the tenant is to treat this tenancy as a month-to-month tenancy. Therefore, I find the tenant was required under the Act to provide at least one full month of written notice to end the tenancy.

I find the verbal notice given to the landlord on May 26, 2009 is insufficient for the tenant to end the financial obligation to the landlord effective May 31, 2009. I am also satisfied that the landlord did whatever was reasonable to minimize the loss of rental income upon receiving notice from the tenants. I do not find sufficient evidence that the landlord violated the Act in a manner that would disentitle the landlord to collect rent under the terms of the tenancy agreement and its right to receive rent under the Act. Rather, I find the tenant's decision to vacate the rental unit and return to her father's home to be a personal choice. While the tenant's decision may have been motivated by good intentions for her family's well-being, it remains that the tenant violated the Act by ending the tenancy without sufficient notice. Therefore, the landlord is entitled to rent



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for the month of June 2009 and I authorize the landlord to retain the tenants' security deposit in satisfaction of the unpaid rent.

As the landlord was successful with this application, I award the filing fee to the landlord. The tenants are ordered to pay the landlord \$50.00 for the filing fee paid for this application. The landlord is provided a Monetary Order to serve upon the tenants to enforce payment.

Conclusion

The landlord is authorized to retain the tenants' security deposit in satisfaction of loss of rent and is awarded recovery of the filing fee.

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 15, 2009.

Dispute Resolution Officer