

Dispute Resolution Services

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

Decision

Dispute Codes: MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

The landlord initially named two respondents in his application. However, the landlord acknowledged at the hearing that the second respondent, D.J., had not been served with a copy of the application for dispute resolution and notice of hearing. The claim as against D.J. is dismissed. The style of cause in this decision reflects that dismissal.

Although the landlord requested an order that he be permitted to retain the security deposit, I note that the issue of the security deposit has already been dealt with in a previous decision. In a decision dated June 9, 2009 a final and binding decision was made with respect to the security deposit. Accordingly I have not addressed the deposit further in this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2008 and ended on February 28, 2009. The parties further agreed that the tenancy was set for a fixed term which was to expire on June 30, 2009. The tenancy agreement has a provision by which the tenant was obligated to pay a lease breaking fee if she ended the tenancy prior to the end of the fixed term.

The parties agreed that early in 2009 they met together and the tenant asked the landlord to end her tenancy as her father, with whom she was living, was behaving in an

abusive fashion and drinking excessively. The tenant told the landlord that she could not afford to pay the rent without her father's assistance. The landlord gave the tenant a notice to end tenancy.

The landlord seeks an award for \$1,200.00, which is the amount of the lease breaking fee and a further award for \$66.50 for unpaid utilities. The tenant agreed that she owed the landlord \$66.50 for utilities but argued that she should not have to pay the lease breaking fee because the landlord ended the tenancy by serving her with a notice to end tenancy.

Analysis

I find that although the landlord served the tenant with a notice to end tenancy, he did so at the behest of the tenant who was unable to continue living in the rental unit with her father. I find that in effect, the tenant ended the tenancy by asking the landlord to end the tenancy and therefore find that the tenant must be held liable for the \$1,200.00 lease breaking fee. I award the landlord \$1,200.00.

As the tenant has agreed that she owes \$66.50 for utilities, I award the landlord \$66.50. The landlord is also entitled to recover the \$50.00 filing fee paid to bring this application for a total award of \$1,316.50. I grant the landlord an order under section 67 of the Act for \$1,316.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$1,316.50.

Dated September 29, 2009.