



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's request for a Monetary Order for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit and recovery of the filing fee. The female tenant appeared at the hearing and confirmed both co-tenants were notified of the landlord's application. Both parties were provided the opportunity to be heard and respond to the other party's submissions.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for loss of rent for the month of June 2009?
2. Retention of the security deposit.
3. Award of the filing fee.

Background and Evidence

Upon consideration of all the evidence before me, I make the following findings. The tenancy commenced May 1, 2008 for a fixed term set to expire April 30, 2009. Rent of \$725.0 was payable on the 1st day of every month. A \$362.50 security deposit was paid on April 8, 2008. On May 12, 2009 the tenant provided written notice to the landlord that the tenancy would be ending at the end of May 2009. The parties conducted a move-out inspection on May 28, 2009 and the landlord obtained the tenant's forwarding address. The landlord made this application on June 12, 2009.

The landlord testified that the rental unit was vacant for June 2009 and the landlord is seeking loss of rent for June 2009 from the tenants. The landlord testified that advertisements were run in newspapers and the internet for vacant units in the building, not specifically the rental unit; however, the landlord considered the rental unit desirable as it is the only 1 bedroom unit with a dishwasher.

The tenant testified that she emailed the landlord on May 2, 2009 to give the landlord notice to end tenancy. The landlord did not respond to the email so the tenant phoned the landlord and asked the landlord what the landlord needed from the tenants to end tenancy. The tenant was informed to provide a written notice to end tenancy.



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The landlord claims the tenant's email was not received. The tenant did not provide documentary evidence of the email sent to the landlord for the hearing.

Analysis

Upon review of the tenancy agreement, I find that the tenancy converted to a month-to-month basis at the end of the fixed term. Where a tenant wishes to end a month-to-month tenancy, section 47 of the Act requires the tenant to provide the landlord with written notice that is effective on the last day of the rental period and at least one month after the date the landlord receives the notice. The Act requires a tenant's notice to be in writing, signed and dated, give the rental unit address and state the effective date of the notice. The notice must be delivered to the landlord in a manner that complies with section 88 of the Act.

The tenant claimed to have given notice to end tenancy on May 2, 2009 via email; however, I have insufficient evidence it was actually received by the landlord. Even if I accepted the tenant's position that email was sent May 2, 2009, an effective date of May 30, 2009 on a notice received on May 2, 2009 is not at least one month of notice. Further, email communication does not meet the requirements for notice to end tenancy as it is not signed by the tenant. Finally, I was not provided evidence that the landlord accepted email for service of documents and I find email would not meet the requirements of section 88. Therefore, it is clear the tenants gave late notice to end tenancy and breached the notice requirements of the Act.

Where a party does not comply with the requirements of the Act, the other party may make a monetary claim for damages or loss against that party. The party making the claim must show they suffered a loss as a result of the violation, the quantum of the loss and that the party did whatever was reasonable to minimize the damage or loss.

In this case, I find the landlord took reasonable actions to try to rent vacant rental units, including the rental unit, and that this unit likely remained vacant for the month of June 2009 due to the late notice given by the tenants. Therefore, I find the landlord has established an entitlement to recover loss of rent of \$725.00 from the tenants.

I authorize the landlord to retain the tenants' security deposit and accrued interest in partial satisfaction of the loss of rent owed the landlord. As the landlord was successful with this application, I also award the filing fee to the landlord. I provide the landlord with a Monetary Order calculated as follows:



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Loss of rent – June 2009	\$ 725.00
Filing fee	50.00
Less: security deposit and interest	<u>(366.48)</u>
Monetary Order	<u>\$ 408.52</u>

The landlord must serve the tenants with the Monetary Order and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is authorized to retain the tenants' security deposit and interest in partial satisfaction of loss of rent owed to the landlord for June 2009. The landlord is provided a Monetary Order for the balance of \$408.52 to serve upon the tenants.

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: October 01, 2009.

Dispute Resolution Officer