

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking compensation under the Act or tenancy agreement, and to recover the filing fee.

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 compensation sought?

Background and Evidence

The Tenant took an assignment, with the Landlord's written approval, of a tenancy agreement which ended on June 30, 2009. On the expiry of the tenancy agreement it converted to a month to month tenancy. The tenancy agreement has a clause regarding ending the tenancy. It states,

"The tenant may end a monthly... tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives the written notice on or before April 30th."

The Agent for the Landlord testified that in or about the middle of May 2009, the Tenant informed him she would be moving out on July 1, 2009. He explained to her about the notice provisions required.

On June 1, 2009, the Agent for the Landlord saw the Tenant and asked her if she was still thinking about moving, and reminded her about the written notice required.

Later that day the Agent for the Landlord received a telephone message from the Tenant informing him that she had put her notice to end tenancy in the Landlord's mailbox. The Agent for the Landlord retrieved the notice, and saw that it was dated on May 31, 2009. He took a letter to her that evening explaining her notice will take effect on July 31, 2009, and consequently she would be responsible for paying the rent for all of July 2009.

The Landlord is claiming \$950.00 for the one month of rent.

The Tenant testified and acknowledged she had put the notice in the mailbox one day late, on June 1, 2009.

She testified that the Landlord had made deductions from her security deposit which she agreed to in writing, however, she had not received the balance due to her from the Landlord. She wanted the Landlord to return the balance of the security deposit, or have it offset from the month of rent due for July 2009.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Tenant breached the Act and the tenancy agreement by failing to give proper notice to end the tenancy.

I find the Landlord is entitled to one month of compensation in the amount of \$950.00, and to recover the filing fee of \$50.00. I grant the Landlord an order under section 67 for the balance due of **\$1,000.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

It was explained to the Tenant that she would have to file her own Application for Dispute Resolution to claim for her security deposit. The Tenant was unable to make a request for a monetary order in the Landlord's Application. The Tenant was advised to call an information officer at the Residential Tenancy Branch, or to look for assistance on the Internet Website of the branch.

Conclusion

The Landlord is entitled to one month of rent and to recover the filing fee. A formal order has been issued.

The Tenant may make a claim for the return of the balance of her security deposit in her own Application for Dispute Resolution.

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 22, 2009.

Dispute Resolution Officer